49/pt. 1-99/990

code of federal regulations

Transportation

49

PARTS 1 TO 99

Revised as of October 1, 1990

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

AE 2.106/3:

READEX FICHE best copy available

code of federal regulations

Transportation

49

PARTS 1 TO 99

Revised as of October 1, 1990

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

1985

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1990

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Table of Contents

Page

Explanation v

Title 49:

Subtitle A—Office of the Secretary of Transportation 3

Finding Aids:

Material Approved for Incorporation by Reference 439

Table of CFR Titles and Chapters 441

Alphabetical List of Agencies Appearing in the CFR 457

List of CFR Sections Affected 467

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 49 CFR 1.1 *refers to title 49, part 1, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call (202) 523-4534.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table

III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 49—TRANSPORTATION is composed of seven volumes. The parts in these volumes are arranged in the following order: Parts 1-99, Parts 100-177, Parts 178-199, Parts 200-399, Parts 400-999, Parts 1000-1199, Part 1200-End. The first volume (Parts 1-99) contains current regulations issued under Subtitle A—Office of the Secretary of Transportation; the second volume (Parts 100-177) and the third volume (Parts 178-199) contain the current regulations issued under Chapter I—Research and Special Programs Administration (DOT); the fourth volume (Parts 200-399) contains the current regulations issued under Chapter II—Federal Railroad Administration (DOT), and Chapter III—Federal Highway Administration (DOT); the fifth volume (Parts 400-999) contains the current regulations issued under Chapter IV—Coast Guard (DOT), Chapter V—National Highway Traffic Safety Administration (DOT), Chapter VI—Urban Mass Transportation Administration (DOT), Chapter VII—National Railroad Passenger Corporation (AMTRAK), and Chapter VIII—National Transportation Safety Board; the sixth volume (Parts 1000-1199) and the seventh volume (Part 1200-End) both contain current regulations issued under Chapter X—Interstate Commerce Commission. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

In the volume containing Parts 100-177, see § 172.101 for the Hazardous Materials Table. An Identification Number Cross Reference Index to Proper Shipping Names in §§ 172.101 and 172.102 appears at the beginning of Part 172. Part 325 and Parts 350-399 of this title contain the Federal Motor Carrier Safety Regulations and related regulations, and a Subject Index to these regulations follows Chapter III. The Federal Motor Vehicle Safety Standards appear in Part 571.

Redesignation tables and a derivation table for Chapter X—Interstate Commerce Commission appear in the Finding Aids section of the sixth and seventh volumes.

For this volume, Sheli Fleming was the Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes – such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6483

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected – one year as issued – $21.00 (LCS)

☐ Federal Register Index – one year as issued – $19.00 (FRSU)

1. The total cost of my order is $______. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. ______________________________
(Company or personal name)
____
(Additional address/attention line)
____
(Street address)
____
(City, State, ZIP Code)
(______) ______________________
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
____
(Credit card expiration date)

Thank you for your order!

____
(Signature)

(REV. 10-1-86

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402–9371

Title 49—Transportation

(This book contains parts 1 to 99)

Part

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION 1

EDITORIAL NOTE: Other regulations issued by the Department of Transportation appear in 14 CFR chapters I and II, 23 CFR, 33 CFR chapters I and IV, 44 CFR chapter IV, 46 CFR chapters I through III, 48 CFR chapter 12, and 49 CFR chapters I through VI.

Subtitle A—Office of the Secretary of Transportation

Part		Page
1	Organization and delegation of powers and duties.	5
3	Official seal	45
5	Rulemaking procedures	46
6	Implementation of Equal Access to Justice Act in agency proceedings	49
7	Public availability of information	54
8	Classification and declassification of national security information and material	85
9	Testimony of employees of the Department and production of records in legal proceedings	93
10	Maintenance of and access to records pertaining to individuals	96
17	Intergovernmental review of Department of Transportation programs and activities	124
18	Uniform administrative requirements for grants and cooperative agreements to state and local governments	127
20	New restrictions on lobbying	156
21	Nondiscrimination in federally-assisted programs of the Department of Transportation—effectuation of title VI of the Civil Rights Act of 1964	168
23	Participation by minority business enterprise in Department of Transportation programs	179
24	Uniform relocation assistance and real property acquisition for Federal and federally assisted programs	214
25	[Reserved]	
27	Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance	255
29	Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)	300

Part Page
30 Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors 319
31 Program fraud civil remedies 324
40 Procedures for transportation workplace drug testing programs 340
71 Standard time zone boundaries 366
79 Medals of honor 371
81 Recommendations to the President under section 801 of the Federal Aviation Act of 1958 372
89 Implementation of the Federal Claims Collection Act 373
90 Audits of State and Local Governments 380
91 International air transportation fair competitive practices 386
92 Recovering debts to the United States by salary offset 388
93 Aircraft allocation 398
95 Advisory committees 398
98 Enforcement of restrictions on post-employment activities 401
99 Employee responsibilities and conduct 404

APPENDIX TO SUBTITLE A—UNITED STATES RAILWAY ASSOCIATION—EMPLOYEE RESPONSIBILITIES AND CONDUCT 431

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Subpart A—General

Sec.

1.1 Purpose.
1.2 Definitions.
1.3 Organization of the Department.
1.4 General responsibilities.

Subpart B—Office of the Secretary

1.21 Purpose.
1.22 Structure.
1.23 Spheres of primary responsibility.
1.24 Authority.
1.25 Relationships.
1.26 Secretarial succession.

Subpart C—Delegations

1.41 Purpose.
1.42 Exercise of authority.
1.43 General limitations and reservations.
1.44 Reservation of authority.
1.45 Delegations to all Administrators.
1.46 Delegations to Commandant of the Coast Guard.
1.47 Delegations to Federal Aviation Administrator.
1.48 Delegations to Federal Highway Administrator.
1.49 Delegations to Federal Railroad Administrator.
1.50 Delegations to National Highway Traffic Safety Administrator.
1.51 Delegations to Urban Mass Transportation Administrator.
1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.
1.53 Delegations to the Administrator of the Research and Special Programs.
1.54 Delegations to all Secretarial Officers.
1.55 Delegations to Deputy Secretary.
1.56 Delegations to Assistant Secretary for Policy and International Affairs.
1.56a Delegations to the Designated Senior Career Official, Office of the Assistant Secretary for Policy and International Affairs.
1.57 Delegations to General Counsel.
1.57a Delegations to the Deputy General Counsel.
1.57b Delegations to the Associate General Counsel.
1.58 Delegations to Assistant Secretary for Budget and Programs.
1.59 Delegations to Assistant Secretary for Administration.
1.59a Redelegations by the Assistant Secretary for Administration.
1.60 Delegations to the Inspector General.
Sec.
1.61 Delegations to Assistant Secretary for Governmental Affairs.
1.62 Delegations to the Director of Small and Disadvantaged Business Utilization.
1.63 Delegations to Assistant Secretary for Public Affairs.
1.64 Delegations to the Science and Technology Advisor.
1.65 Authority to classify information.
1.66 Delegations to Maritime Administrator.
1.67 Delegations to Maritime Subsidy Board.
1.68 Delegations to Director of Commercial Space Transportation.
APPENDIX A TO PART 1—DELEGATIONS AND REDELEGATIONS BY SECRETARIAL OFFICERS

AUTHORITY: 49 U.S.C. 322.

SOURCE: Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

This part describes the organization of the Department of Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested, in the Secretary of Transportation by law.

§ 1.2 Definitions.

As used in this part, "Administrator" includes:

(a) The Coast Guard Commandant.

(b) The Federal Aviation Administrator.

(c) The Federal Highway Administrator.

(d) The Federal Railroad Administrator.

(e) The National Highway Traffic Safety Administrator.

(f) The Urban Mass Transportation Administrator.

(g) The Administrator of the St. Lawrence Seaway Development Corporation.

(h) The Research and Special Programs Administrator.

(i) The Maritime Administrator.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981]

§ 1.3 Organization of the Department.

(a) The Secretary of Transportation is the head of the Department.

(b) The Department is comprised of the Office of the Secretary and the following operating elements, the heads of which report directly to the Secretary:

(1) The U.S. Coast Guard, headed by the Commandant.

(2) The Federal Aviation Administration, headed by the Administrator.

(3) The Federal Highway Administration, headed by the Administrator.

(4) The Federal Railroad Administration, headed by the Administrator.

(5) The National Highway Traffic Safety Administration, headed by the Administrator.

(6) The Urban Mass Transportation Administration, headed by the Administrator.

(7) The St. Lawrence Seaway Development Corporation, headed by the Administrator.

(8) The Research and Special Programs Administration, headed by the Administrator.

(9) The Maritime Administration, headed by the Administrator and including within it the Maritime Subsidy Board composed of the Maritime Administrator, the Deputy Maritime Administrator, and the Chief Counsel of the Maritime Administration.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981]

§ 1.4 General responsibilities.

(a) *Office of the Secretary.* Provides for:

(1) Leadership in formulating and executing well-balanced national and international transportation objectives, policies, and programs;

(2) Stimulating and promoting research and development in all modes and types of transportation, with special emphasis on transportation safety;

(3) Coordinating the various transportation programs of the Federal Government;

(4) Encouraging maximum private development of transportation services;

(5) Responsive, timely, and effective liaison with Congress, and public and private organizations on transportation matters;

(6) Innovative approaches to urban transportation and environmental enhancement programs; and

(7) Effective management of the Department as a whole.

(b) *U.S. Coast Guard.* Is responsible for:

(1) Upon the high seas and waters subject to the jurisdiction of the United States:

(i) Enforcing or assistance in enforcing applicable Federal laws;

(ii) Administering laws and promulgating and enforcing regulations for promoting safety of life and property, covering all matters not specifically delegated by law to some other executive department or reserved to the States;

(iii) Developing, establishing, maintaining, and operating, with due regard to the requirements of national defense, aids to navigation, icebreaking facilities, and rescue facilities for promoting safety; and

(2) Maintaining a state of readiness to function as a specialized service in the Navy, in time of war or when the President shall direct, as provided in section 3 of title 14, United States Code.

(c) *The Federal Aviation Administration.* Is responsible for:

(1) Promulgating and enforcing regulations on all safety matters relating to the manufacture, operation, and maintenance of aircraft;

(2) Registering aircraft and recording rights in aircraft;

(3) Developing, modifying, testing, and evaluating systems, procedures, facilities, and devices needed for the safe and efficient navigation and traffic control of aircraft;

(4) Locating, constructing or installing, maintaining, and operating Federal aids to air navigation, wherever necessary;

(5) Developing air traffic regulations, and administering air traffic control of civil and military air operations within U.S. airspace;

(6) Providing grants-in-aid for developing public airports; and

(7) Promoting and encouraging civil aviation abroad through technical

aviation assistance to other governments.

(d) *The Federal Highway Administration.* Is responsible for:

(1) Planning, in cooperation with the States, the national highway system;

(2) Providing for improving, in cooperation with the States, roads on the Federal-aid primary, secondary, and interstate highway systems and urban extensions thereof;

(3) Highway beautification and scenic enhancement of the Federal-aid highway systems;

(4) Surveying and constructing forest highway system roads, defense highways and access roads, and parkways and roads in national parks and other federally administered areas;

(5) Inspecting records of motor carriers operating in interstate commerce, inspecting motor carrier vehicles, and investigating accidents and reporting violations of motor carrier safety regulations; and

(6) Developing and administering uniform State standards for highway safety programs with respect to identification and surveillance of accident locations; highway design, construction, and maintenance, including highway related aspects of pedestrian safety; and traffic control devices.

(e) *The Federal Railroad Administration.* Is responsible for:

(1) Operating and managing the Alaska Railroad;

(2) Conducting research and development activity in support of improved rail transportation;

(3) Regulating safety functions pertaining to railroads, express companies, and water carriers operating in connection with railroads under a common control, management, or arrangement for continuous carriage or shipment; and

(4) Investigating and issuing reports concerning collisions, derailments, and other railroad accidents resulting in serious injury to persons or to the property of a railroad.

(f) *The National Highway Traffic Safety Administration.* Is responsible for:

(1) Promulgating uniform standards for developing State highway safety programs, except for those standards the development and administration of which are delegated to the Federal Highway Administration.

(2) Establishing, prescribing, and enforcing National standards for improving safety in the operation and performance of motor vehicles and equipment.

(3) Informing the public of the comparative characteristics and operational cost of passenger motor vehicles and requiring display of comparative insurance costs by automobile dealers.

(4) Administering a program of mandatory automotive fuel economy standards for passenger and non-passenger automobiles for model year 1978 and beyond.

(5) Establishing safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers and enforcing the prohibition against tampering with odometers.

(g) *The Urban Mass Transportation Administration.* Is responsible for:

(1) Exercising the authority vested in the Secretary for developing comprehensive and coordinated mass transportation systems to serve metropolitan and other urban areas;

(2) Administering urban mass transportation programs and functions; and

(3) Assuring appropriate liaison and coordination with other governmental organization, with respect to the foregoing.

(h) *The St. Lawrence Seaway Development Corporation.* Is responsible for the development, operation, and maintenance of that part of the St. Lawrence Seaway within the territorial limits of the United States.

(i) *The Research and Special Programs Administration.* Is responsible for:

(1) Planning, developing, initiating and managing programs in all fields of transportation research and development. Maintaining the capability to perform research and analysis in transportation planning and socio-economic effects, program management, and technological support in response to request for line participation in DOT policy formulations. Particular efforts will be made on transportation systems problems, advanced transportation concepts, and on multimodal transportation. RSPA will develop and

maintain a vital statistics and related transportation information data base;

(2) Exercising for the Secretary the multimodal hazardous materials (HM) program and prescribing and enforcing safety regulations for the transportation of gases or hazardous liquids by pipeline;

(3) Developing, managing, and evaluating programs and research activities for the security of passengers and cargo in the transportation systems and for the prevention of unlawful or other acts adversely affecting the efficiency or integrity of the Nation's transportation systems and providing leadership in the development and improvement of coordinated domestic and international transportation services;

(4) Providing leadership on all technical, navigation and communication, and systems engineering activities;

(5) Providing a point of contact for the Department with the academic community to encourage transportation research;

(6) Overseeing the effective discharge of the Secretary's statutory and administrative transportation responsibilities in all emergencies affecting the national defense and in national or regional crises; and

(7) Managing a Transportation Safety Institute which designs and conducts training programs responsible to the requirements of Government and industry as expressed by the operating elements of the Department.

(j) *The Maritime Administration.* Is responsible for:

(1) Fostering the development and maintenance of an American merchant marine sufficient to meet the needs of the national security and of the domestic and foreign commerce of the United States;

(2) Awarding and administering construction-differential subsidy contracts and operating-differential subsidy contracts to aid the American merchant marine, and trade-in allowances for new ship construction;

(3) Entering into and administering agreements for capital contruction funds (excepting fishing vessels) and construction reserve funds;

(4) Providing insurance on construction loans and ship mortgages or guarantees on ship financing obtained from private sources for ship construction and reconstruction (excepting fishing vessels);

(5) Providing assistance to the shipping industry to generate increased trade and cargo shipments on U.S. flag ships;

(6) Promoting development of ports and intermodal transportation systems;

(7) Promoting development of the domestic waterborne commerce of the United States;

(8) Overseeing the administration of cargo preference statutes;

(9) Entering into and administering charters and general agency agreements for operation of Government-owned merchant ships;

(10) Maintaining custody of, and preserving, ships in the National Defense Reserve Fleet;

(11) Selling surplus Government-owned ships;

(12) Supervising design and construction of ships for Government account;

(13) Furnishing war risk insurance on privately-owned merchant ships;

(14) Administering the foreign transfer program regarding ships and other maritime properties;

(15) Training merchant marine officers;

(16) Conducting research and development to improve and promote the waterborne commerce of the United States; and

(17) Issuing rules and regulations with respect to the foregoing functions.

(k) *The Maritime Subsidy Board (within the Maritime Administration).* Is responsible for:

(1) Making, amending, and terminating subsidy contracts, which shall be deemed to include, in the case of construction-differential subsidy: (i) The contract for the construction, reconstruction, or reconditioning of a vessel, and (ii) the contract for the sale of the vessel to the subsidy applicant or the contract to pay a construction-differential subsidy and the cost of the national defense features, and, in the case of operating-differential subsidy,

the contract with the subsidy applicant for the payment of the subsidy.

(2) Conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of titles V, VI, and VII, and sections 301 (except investigations, hearings, and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales, and minimum working conditions), 708, 805(a), and 805(f) of the Merchant Marine Act, 1936, as amended (the "Act").

(3) Approving the sale, assignment, or transfer of any operating subsidy contract under section 608 of the Act.

(4) Performing so much of the functions with respect to adopting rules and regulations, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under sections 204 and 214 of the Act, as they relate to the functions of the Board.

(5) Performing as much of the functions specified in section 12 of the Shipping Act, 1916, as amended, as the same relate to the functions of the Board under paragraphs (k) (1) through (4) of this section.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-120, 41 FR 42956, Sept. 29, 1976; Amdt. 1-125, 41 FR 53798, Dec. 9, 1976; Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981; Amdt. 1-211, 51 FR 29471, Aug. 18, 1986]

Subpart B—Office of the Secretary

§ 1.21 Purpose.

This subpart establishes the basic organizational structure, spheres of primary responsibility, and lines of authority in the Office of the Secretary. It also describes the relationships between the Office of the Secretary and the operating administrations, and provides for succession to the position of Secretary in case of need.

§ 1.22 Structure.

The structure of the Office of the Secretary, through the level of functional offices, is as follows:

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the Science and Technology Advisor, Executive Secretariat, the Contract Appeals Board, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization and the Office of Commercial Space Transportation, all of which report to the Secretary. The Assistant Secretaries, the General Counsel, the Inspector General, and the Regional Representatives of the Secretary also report directly to the Secretary.

(b) *Office of the Assistant Secretary for Policy and International Affairs.* This Office is composed of the Offices of Transportation Regulatory Affairs; International Transportation and Trade; Economics; Aviation Operations; International Aviation Relations; and Essential Air Service.

(c) *Office of the General Counsel.* This Office is composed of the Offices of Legislation; Litigation; Regulation and Enforcement; Environmental, Civil Rights, and General Law; International Law; and the Board for Correction of Military Records.

(d) *Office of the Assistant Secretary for Budget and Programs.* This Office is composed of the Offices of Programs and Evaluation; and Budget.

(e) *Office of the Assistant Secretary for Governmental Affairs.* This Office is composed of the Offices of Congressional Affairs; Intergovernmental and Consumer Affairs; and Technology and Planning Assistance.

(f) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel; Management Planning; Information Resource Management; Administrative Services and Property Management; Hearings; Acquisition and Grant Management; Security; and Financial Management.

(g) *Office of the Assistant Secretary for Public Affairs.* This Office is composed of the Offices of Public Information; and TV, Film, and Publications.

(h) *Office of the Inspector General.* The duties and responsibilities of the Office of Inspector General are carried out by the Assistant Inspector General for Auditing; the Assistant Inspector General for Investigations; and the Assistant Inspector General for Policy, Planning, and Resources.

(i) *Regional Representatives of the Secretary.* These officials represent the Secretary in the field and constitute a principal point of contact for the exchange of information in regional interagency, and intergovernmental affairs.

[Amdt. 1-157, 45 FR 83403, Dec. 18, 1980, as amended by Amdt. 1-184, 48 FR 44078, Sept. 27, 1983; Amdt. 1-213, 51 FR 34218, Sept. 26, 1986]

§ 1.23 Spheres of primary responsibility.

(a) *Secretary and Deputy Secretary.* Overall planning, direction, and control of Departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in Departmental programs, transportation research and technology, and commercial space transportation.

(b) *Assistant Secretary for Policy and International Affairs.* Public policy assessment and review; private sector evaluation; regulatory and legislative review; international policy and issues; economic regulation of the airline industry; and essential air service program.

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary, the Office of the Secretary, and final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; exercise of functions, powers, and duties as Judge Advocate General under the Uniform Code of Military Justice (Chapter 47 of Title 10, United States Code) with respect to the United States Coast Guard; advice and assistance with respect to uniform time matters; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Departmental legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department; review and final action on application for correction of military records of the United States Coast Guard.

(d) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; Departmental financial plans, apportionments, reapportionments, reprogrammings, allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected administrative matters relating to the immediate Office of the Secretary.

(e) *Assistant Secretary for Governmental Affairs.* Coordination of legislative and non-legislative relationships; Congressional affairs; communications and coordination with Federal, State and local government, industry and labor, and with citizens and organizations representing consumers; sharing of related technology in developing and promoting DOT programs; and coordination and technical assistance on intermodal planning matters.

(f) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; acquisition and grant management (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); information resource management; financial management; property management; paperwork management; management information; security; computer support; telecommunications; and administrative support services for the Office of the Secretary and certain other components of the Department.

(g) *Assistant Secretary for Public Affairs.* Public information and Departmental relations with the news media, the general public, and selected special publics.

(h) *Inspector General.* Conduct, supervise, and coordinate audits and investigations, review existing and proposed legislation and make recommendations to the Secretary and Congress (Semi-annual reports) concerning their impact on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommend policies for and conduct, supervise, or coordinate other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse.

(i) *Science and Technology Advisor.* Principal advisor to the Secretary and Deputy Secretary on scientific and technical matters; scientific and technological representative of the Department to the academic community, private sector, professional organizations, and other Government agencies.

(j) *Executive Secretary.* Central facilitative staff for the Immediate Office of the Secretary and Secretarial Officers.

(k) *Contract Appeals Board.* Hearings and decisions on appeals from decisions of Departmental contracting officers and on claims for extraordinary relief under Pub. L. 85-804.

(l) *Departmental Office of Civil Rights.* DOT director of equal employment opportunity; Department-wide compliance officer; title VI (Civil Rights Act of 1964) coordinator; Department-wide compliance with related laws, Executive Orders, regulations, and policies, and formal complaints of discrimination.

(m) *Regional Representatives of the Secretary.* Interagency, intergovernmental, and Departmental coordination in the field; membership on Regional Councils and Field Coordination Groups.

(n) *Office of Small and Disadvantaged Business Utilization.* Responsible for the Department's implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act, as amended, (15 U.S.C. 637 and 644) and for other Departmental small and disadvantaged business policy direction.

(o) *Office of Commercial Space Transportation.* Focal point within the Federal government for private sector space launch contacts and licensing related to commercial expendable launch vehicle operations and for promotion and encouragement of commercial expendable launch vehicle industry.

[Amdt. 1-157, 45 FR 83403, Dec. 18, 1980, as amended by Amdt. 1-184, 48 FR 44078, Sept. 27, 1983; Amdt. 1-201, 50 FR 7782, Feb. 26, 1985; Amdt. 1-209, 51 FR 29232, Aug. 15, 1986; Amdt. 1-213, 51 FR 34219, Sept. 26, 1986]

§ 1.24 Authority.

(a) The Deputy Secretary may exercise the authority of the Secretary, except where specifically limited by law, order, regulation, or instructions of the Secretary.

(b) Acting in his or her own name and title, each Assistant Secretary, the Inspector General, or the General Counsel, within his or her sphere of responsibility, is authorized to identify and define the requirements for, and to recommend to the Secretary, new or revised Departmental policies, plans, and proposals. Each of these officers is authorized to issue Departmental standards, criteria, systems and procedures that are consistent with applicable laws, Executive Orders, Government-wide regulations and policies established by the Secretary, and to inspect, review, and evaluate Departmental program performance and effectiveness and advise the Secretary regarding the adequacy thereof.

(c) Except for nondelegable statutory duties, including those which devolve as a result of succession to act as Secretary of Transportation, each Deputy Assistant Secretary, the Deputy Inspector General, and the Deputy General Counsel is authorized to act for and perform the duties of his or her principal in the absence or disability of the principal and as otherwise directed by the principal.

(d) *Inspector General.* The Inspector General shall report to and be under the general supervision of the Secretary and Deputy Secretary. In accordance with the statutory intent of the Inspector General Act to create an independent and objective unit, the Inspector General is authorized to make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary and desirable. Neither the Secretary nor the Deputy Secretary shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83404, Dec. 18, 1980]

§ 1.25 Relationships.

(a) *Normal staff role.* Normally, the functions of the Assistant Secretaries are staff and advisory in nature. In performing their functions, the Assistant Secretaries are responsible for continuing liaison and coordination among themselves and with the operating administrations to:

(1) Avoid unnecessary duplication of effort by or in conflict with the performance of similar activities by the operating administrations and the other Assistant Secretaries pursuant to their Secretarial delegations of authority; and

(2) Assure that the views of the operating administrations are considered in developing Departmental policies, plans, and proposals.

The Assistant Secretaries are also available to assist, as appropriate, the operating administrations in implementing Departmental policy and programs. As primary staff advisors to the Secretary, the Assistant Secretaries are concerned with transportation matters of the broadest scope, including modal, intermodal, and other matters of Secretarial interest.

(b) *Exceptions.* There are exceptions to the normal staff role described in paragraph (a) of this section. In selected instances, the Secretary has specifically delegated to Assistant Secretaries authority which they may exercise on the Secretary's behalf. For example, the Secretary has delegated authority to the Assistant Secretary for Policy and International Affairs to decide on most requests to intervene or appear before administrative agencies, subject to the concurrence of the General Counsel. Also, from time to time, activities of an operational character may be delegated to an Assistant Secretary when the nature of the function or its stage of development makes it untimely to effect assignment to an operating administration.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

(1) Deputy Secretary.

(2) General Counsel.

(3) Assistant Secretary for Policy and International Affairs.

(4) Assistant Secretary for Governmental Affairs.

(5) Assistant Secretary for Budget and Programs.

(6) Assistant Secretary for Public Affairs.

(7) Assistant Secretary for Administration.

(8) Saint Lawrence Seaway Development Corporation Administrator.

(b) Without regard to the foregoing, a person directed to perform the duties of the Secretary pursuant to 5 U.S.C. 3347 shall act as Secretary of Transportation.

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980, as amended by Amdt. 1-184, 48 FR 44079, Sept. 27, 1983]

Subpart C—Delegations

§ 1.41 Purpose.

(a) Except as provided in paragraph (b) of this section, this subpart provides for the exercise of the powers and performance of the duties vested in the Secretary of Transportation by law.

(b) For delegations of authority vested in the Secretary by Executive Order 11652 originally to classify documents as secret or confidential, see § 8.11 of this subtitle.

§ 1.42 Exercise of authority.

In exercising powers and performing duties delegated by this subpart or redelegated pursuant thereto, officials of the Department of Transportation are governed by applicable laws, Executive orders and regulations and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary, or, with respect to matters under their jurisdictions, by or on behalf of the Deputy Secretary, an Assistant Secretary, the Inspector General, the General Counsel, or an Administrator. This includes, wherever specified, the requirement for advance notice to, prior coordination with, or prior approval by an authority other than that of the official proposing to act.

[Amdt. 1-114, 41 FR 1288, Jan. 7, 1976, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.43 General limitations and reservations.

(a) All powers and duties that are not delegated by the Secretary in this subpart, or otherwise vested in officials other than the Secretary, are reserved to the Secretary. Except as otherwise provided, the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

(b) Except as provided in § 1.42 and subject to paragraph (a) of this section and § 1.44, the Deputy Secretary, the Assistant Secretaries, the Inspector General, the General Counsel, and the Administrators exercise the powers and perform the duties delegated to them under this subpart.

(c) Notwithstanding the provisions of paragraph (a), the delegation of authority in § 1.56a of this title to the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs to make decisions in certain aviation hearing cases is exclusive, and may not be exercised by any other Departmental official, including the Secretary. The Secretary reserves (and delegates to the Assistant Secretary for Policy and International Affairs) only the authority to make discretionary review of any such decision and to approve it or to remand it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980, as amended by Amdt. 1-199, 49 FR 50996, Dec. 31, 1984]

§ 1.44 Reservation of authority.

The delegations of authority in §§ 1.45 through 1.53 and §§ 1.66 and § 1.67 do not extend to the following actions, authority for which is reserved to the Secretary or the Secretary's delegatee within the Office of the Secretary:

(a) *General transportation matters.* (1) Transportation leadership authority under section 4(a) of the Department of Transportation Act (49 U.S.C. 1653(a)).

(2) Functions relating to transportation activities, plans, and programs under section 4(g) of the Department of Transportation Act (49 U.S.C. 1653(g)).

(3) Authority to develop, prepare, coordinate, transmit, and revise transportation investment standards and criteria under section 7 of the Department of Transportation Act (49 U.S.C. 1656).

(4) Authority relating to standard time zones and advanced (daylight) time (15 U.S.C. 260 *et seq.*).

(5) Authority related to national transportation policy under section 3 of the Airport and Airway Development Act of 1970 (84 Stat. 219).

(b) *Legislation and reports.* (1) Submission to the President, the Director of the Office of Management and Budget, or the Congress of proposals or recommendations for legislation, Executive orders, proclamations or reorganization plans or other Presidential action.

(2) Submission to Congress or the President of any report or any proposed transportation policy or investment standards or criteria, except with the prior written approval of the Secretary.

(3) Submission of the annual statement on systems of internal account-

ing and administrative control under the Federal Managers' Financial Integrity Act of 1982 (Pub. L. 97-255).

(c) *Budget and finance.* (1) Approval and submission to the Office of Management and Budget of original or amended budget estimates or requests for allocations of personnel ceiling (31 U.S.C. 22-24).

(2) Approval of requests for legislation which, if enacted, would authorize subsequent appropriations for the Department (31 U.S.C. 581b).

(3) Transfer of the balance of an appropriation from one operating element to another within the Department (31 U.S.C. 581c).

(4) Submission to the Director of the Office of Management and Budget of requests for the transfer of the balance or portions of an appropriation from one element to another within the Department (31 U.S.C. 665).

(d) *Interventions and appearances.* Except with respect to proceedings relating to safety fitness of an applicant (49 U.S.C. 1653(e)), the making of decisions on requests to intervene or appear before courts and administrative agencies to present the views of the Department.

(e) *Personnel.* (1) Recommendations to the Civil Service Commission of the allocation of a position to GS-16, 17, or 18 or an equivalent level (5 U.S.C. 5108).

(2) Recommendations to the Civil Service Commission of approval of the qualifications of any candidate for a position at grade GS-16, 17, or 18 or an equivalent level (5 U.S.C. 3324), or to an executive level position.

(3) Recommendations to the Civil Service Commission of a Lump-Sum Incentive Award in Excess of $5,000 (5 U.S.C. 4502).

(4) Approval of the following actions relating to Schedules A, B, and C and noncareer executive assignment positions or incumbents, except for actions under Schedules A and B limited to one year or less at grade GS-9 or lower, or an equivalent level:

(i) Establishment or abolition of positions;

(ii) Hires;

(iii) Promotions other than quality and periodic within-grade promotions;

(iv) Transfer of personnel to Schedule A, B, or C positions or non-career executive assignment positions, either permanently or on detail; and

(v) Transfer of personnel from Schedule A, B, or C or non-career executive assignment positions to career Civil Service positions.

(5) Approval of employment of experts or consultants.

(6) Authority relating to scientific and professional positions under section 6(a) (5) of the Department of Transportation Act (49 U.S.C. 1655(a)(5)).

(7) Authority to determine the maximum limit of age for appointment of air traffic controllers as provided by 5 U.S.C. 3307(b) (86 Stat. 141).

(8) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system, except as delegated to the Commandant of the Coast Guard at § 1.46.

(f) *Security.* (1) Suspension or removal of an employee from a position in the Department for security reasons under Executive Order 10450 (3 CFR, 1949-53 Comp., p. 936) or the employment in the Department of a person who was previously separated for security reasons from any Federal agency.

(2) Authorizing the filling of a critical-sensitive position for a limited period by a person on whom a preappointment full field investigation has not been completed (Executive Order 10450).

(3) Requesting Presidential approval of a claim of executive privilege with respect to information requested by a congressional committee or Member of Congress.

(4) Making determinations prescribed by sections 4(a)(2)(B), 4(b)(3), 5(b), and 9 of Executive Order 10865 (3 CFR, 1959-63 Comp., p. 398) relating to the adjudication and final denial of access to classified information to industry personnel.

(5) Making those determinations or delegations prescribed by sections 2(B) (3), 5(E) (1) and (2) of Executive Order 11652 (37 FR 5209, March 10, 1972) which are reserved to the head of the Department.

(g) *Procurement.* Exercise of the extraordinary authority for defense contracts provided for in Pub. L. 85-804 (50 U.S.C. 1431-1435), and considerations and decisions on contract appeals and other matters pursuant to the Department of Transportation Contract Appeals Regulations (41 CFR part 12-60).

(h) *Printing.* Requesting approval of the Joint Committee on Printing for any procurement or other action requiring Committee approval.

(i) *Interagency agreements.* Execution of any written interdepartmental or interagency agreement with the head of another executive department or agency.

(j) *Withholding of funds.* Withholding or suspension of Federal-Aid Highway funds on a state-wide basis and the waiver or compromise of such withholding or suspension, except for the administration of 23 U.S.C. 141 and 154, which are specifically delegated in § 1.48(b) (23) and (28) and in § 1.50(i) (1) and (2).

(k) *Alaska Railroad.* Extension or abandonment of railroad service.

(l) *National Highway Safety Advisory Committee.* Directing the National Highway Safety Advisory Committee to meet (23 U.S.C. 404(c)).

(m) *Coast Guard.* The following powers relating to the Coast Guard:

(1) Appointment of Advisory Committee to the Academy (14 U.S.C. 193).

(2) Fixing date for visit to Academy by Board of Visitors (14 U.S.C. 194(b)).

(3) Establishment of promotion zone for selection of rear admirals (14 U.S.C. 256(b)).

(4) Removal of an officer from active duty when recommended by a board convened under section 323 of title 14 U.S. Code (14 U.S.C. 326).

(5) Responsibility for supervising activities of Reserve components (10 U.S.C. 264(b)).

(6) Convening General Courts-Martial under the personal authority granted by law (10 U.S.C. 822(a)(2)).

(7) Approval of execution of a sentence dismissing a commissioned officer or cadet (10 U.S.C. 871(b)).

(8) Approval of vacation of a suspension of dismissal (10 U.S.C. 872(b)).

(9) Establishing procedures for the correction of military records (10 U.S.C. 1552(a)).

(10) Establishing a Discharge Review Board under 10 U.S.C. 1553 and reviewing and taking final action on its findings in the following cases:

(i) Those cases in which a minority of the Board requests that their written opinion be forwarded to the Secretary for consideration;

(ii) Those cases selected by the Commandant to inform the Secretary of aspects of the Board's functions which may be of interest to the Secretary;

(iii) Any case in which the Secretary demonstrates an interest; and

(iv) Any case which the president of the Board believes is of significant interest to the Secretary.

(11) [Reserved]

(12) Substitute administrative discharge for dismissal of an officer under 10 U.S.C. 804 (a) and (b).

(13) Designation of commanding officers and officers in charge who may convene general, special and summary courts-martial. (10 U.S.C. 822(a)(6), 823(a)(7), and 824(a)(4).

(14) In time of war certify cases to President to extend statute of limitations until after termination of hostilities. (10 U.S.C. 843(e)).

(15) Direct Judge Advocate General to establish branch office. (10 U.S.C. 868).

(16) Designate officers authorized to remit or suspend any part of amount of unexecuted part of any sentence. (10 U.S.C. 874(a)).

(17) Substitute administrative form of discharge for discharge or dismissal executed in accordance with sentence of court-martial (10 U.S.C. 874(b)).

(18) Substitute administrative discharge for previously executed sentence of dismissal when dismissal not imposed at new trial. (10 U.S.C. 875(c)).

(19) Designate persons to convene courts of inquiry. (10 U.S.C. 935(a)).

(n) *Automatic data processing.* Approval authority relating to automatic data processing equipment and services as delimited by DOT 1370.2A, Procurement of Automatic Data Processing Equipment and Services, of 7.22.70.

(o) *Deepwater ports.* The following powers and duties relating to the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524):

(1) The authority to issue, transfer, amend or renew a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

(2) Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land based facilities (33 U.S.C. 1504(h)(2)).

(3) Consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510).

(4) Prescription of regulations for the submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b)(2)).

(5) Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 1515(c)).

(6) Authority to recover for damages to natural resources (33 U.S.C. 1517(i)(3)).

(7) Authority to request the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Interstate Commerce Commission (33 U.S.C. 1507, 1511).

(p) *Offshore Oil Pollution Compensation Fund.* The following powers and duties included in title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372):

(1) The authority to appoint three member panels to hear and decide disputes pursuant to section 307(h).

(2) The authority to refer a disputed claim to a three member panel for decision in accordance with section 307(i)(1).

(q) *Review and finality of actions by Maritime Subsidy Board.* (1) Review of any decision, report, and/or order of the Maritime Subsidy Board, as described in 46 CFR part 202, as amended.

(r) *Approval of cash purchases of passenger transportation.* The authority under FPMR G-72, as amended, to authorize and approve cash purchases for emergency passenger transportation services costing more than $100.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.44, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.45 Delegations to all Administrators.

(a) Except as prescribed by the Secretary of Transportation, each Administrator is authorized to:

(1) Exercise the authority of the Secretary over and with respect to any personnel within their respective organizations.

(2) Exercise the authority of the Secretary as executive head of a department, under any statute, Executive order or regulation.

(3) Request the Attorney General to approve the award, compromise, or settlement of any tort claim for an amount exceeding $25,000 (28 U.S.C 2672).

(4) Carry out the functions vested in the Secretary concerning environmental enhancement by 49 U.S.C. 303.

(5) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 11490 as amended and by Executive Order 11921 and by the Federal Emergency Management Agency, General Services Administration (FEMA/GSA) as they pertain to his administration, including those relating to continuity of operations, emergency resource management, associated Federal claimant procedures, facilities protection and warfare effects monitoring and reporting, research, stockpiling, financial aid, and training.

(6) Enter into inter- and intradepartmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to Office Directors, Regional Directors District Commanders or other comparable levels and Contracting Officers.

(7) Determine the existence and amount of indebtedness and the method of collecting repayments from employees and members within their respective administrations and collect repayments accordingly, as provided by 5 U.S.C. 5514. Redelegation of this authority may be made only to the principal officials responsible for financial management or such officials principal assistants.

(8) Waive claims and make refunds in connection with claims of the

United States for erroneous overpayment of pay and allowances in amounts aggregating not more than $500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR, parts 91, 92, and 93. Redelegation of this authority may be made only to the level of Regional Director or District Commander.

(9) Settle and pay claims by employees for personal property losses as provided by 31 U.S.C. 3721. This authority may be redelegated only to Office Directors, Regional Directors, District Commanders, or other comparable levels and to those individuals that report to the above officials.

(10) Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to his or her organization.

(11) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(12) Authorize and approve official non-foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, their operating administrations. Additionally, heads of operating administrations, through a redelegation from the Deputy Secretary, may authorize and approve routine operational foreign travel, as defined in DOT 1500.6A, Travel Manual, of 1-2-85. These authorities may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

(13) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated.

(b) Except as otherwise specifically provided, each official to whom authority is granted by §§ 1.45 through 1.53, 1.66, and 1.68 may redelegate and authorize successive redelegations of that authority within the organization under that official's jurisdiction.

(c) Except as provided in §§ 1.48 and 1.59 and 49 CFR 25.302, the functions, powers, and duties of the Secretary of Transportation, with respect to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, Pub. L. 91-646, 84 Stat. 1984, are delegated to:

(1) The head of each of the following Operating Administrations with respect to programs administered by their respective organizations:

(i) U.S. Coast Guard;

(ii) Federal Aviation Administration;

(iii) Federal Highway Administration;

(iv) Federal Railroad Administration;

(v) Urban Mass Transportation Administration;

(vi) National Highway Traffic Safety Administration;

(vii) St. Lawrence Seaway Development Corporation; and

(viii) Maritime Administration.

(2) [Reserved]

(d) Each office to whom authority is delegated by either § 1.45(c) or § 1.59(p) may redelegate and authorize successive redelegations of that authority within the organization under the Administrators' or Assistant Secretary for Administration's jurisdiction.

(e) Each office to whom authority is delegated by either § 1.45(c) or § 1.59(p) may prescribe additional procedures, requirements and regulations that are appropriate to the particular programs administered by the preparing official's organization, provided:

(1) Any such additional guidance is not inconsistent with the Act, 49 CFR Part 25 or Subpart C of this manual;

(2) Any such additional guidance is approved prior to issuance by the Federal government's designated lead agency, the Federal Highway Administration (see § 1.48(cc)), in coordination with the Assistant Secretary for Policy and International Affairs.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 79-12, 44 FR 40641, July 12, 1979; Amdt. 1-157, 45 FR 83405, Dec. 18, 1980; Amdt. 1-159, 46 FR 22593, Apr. 20, 1981; Amdt. 1-202, 50 FR 9036, Mar. 6, 1985;

Amdt. 1-210, 51 FR 29233, Aug. 15, 1986; Amdt. 1-221, 52 FR 46365, Dec. 7, 1987; Amdt. 1-225, 53 FR 15845, May 4, 1988]

§ 1.46 Delegations to Commandant of the Coast Guard.

The Commandant of the Coast Guard is delegated authority to:

(a) Carry out the Great Lakes Pilotage Act of 1960, as amended, except the authority to enter into, revise, or amend arrangements with Canada (74 Stat. 259, 46 U.S.C. 216 *et seq.*).

(b) Carry out all the activities of the Coast Guard, including, but not limited to, law enforcement, safety of life and property at sea (excluding 46 U.S.C. 170 (7), (10) and (11)), aids to navigation, search and rescue, icebreaking, oceanographic research and military readiness functions (49 U.S.C. 1655(b)(1)).

(c) Carry out the following laws relating generally to water vessel anchorages, drawbridge operating, regulations, obstructive bridges, pollution of the sea by oil and the locations and clearances of bridges and causeways over the navigable waters of the United States:

(1) Section 7 of the Act of March 4, 1915, as amended (38 Stat. 1053, 33 U.S.C. 471);

(2) Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362, 33 U.S.C. 499);

(3) The Act of June 21, 1940, as amended (54 Stat. 497, 33 U.S.C. 511 *et seq.*);

(4) The Oil Pollution Act, 1961, as amended (75 Stat. 402, 33 U.S.C. 1001 *et seq.*);

(5) Sections 9 and 18 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401, 502);

(6) The Act of March 23, 1906, as amended (34 Stat. 84, 33 U.S.C. 491 *et seq.*) except section 3 (33 U.S.C. 493) and that portion of section 4 (33 U.S.C. 494) that relates to tolls.

(7) The General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525 *et seq.*) except sections 502(c) and 503.

(d) Carry out the functions vested in the Secretary by the Vessel Documentation Act (94 Stat. 3453, 46 U.S.C. 65a *et seq.*) and the Tonnage Measurement Simplification Act (94 Stat. 3461, 46 U.S.C. 71 *et seq.*), and the functions assigned to the Secretary by Executive Order 12419 relating to admeasurement of Ships; and carry out Reorganization Plan No. 1 of 1967, relating to ship mortgages.

(e) Request the Secretary of the Navy to build at naval shipyards Coast Guard vessels not normally or economically obtainable from private contractors (14 U.S.C. 145(a)(1)).

(f) Administer Executive Order 11459 (34 FR 5057), relating to approval of containers for transport under Customs seal.

(g) Exchange information, through the Secretary of State, with foreign governments on matters dealing with the safety of life and property at sea, other than radio communications, but not including the submission of suggestions to the Secretary of State on international collaboration and conferences (14 U.S.C. 142).

(h) Exchange personnel, vessels, facilities, and equipment with the Secretary of the Navy to facilitate operational readiness for wartime service with the Navy, and agree to undertake such assignments and functions for the mutual benefit of the Navy and Coast Guard as are necessary and advisable, except with respect to those exchanges and agreements which, in the Commandant's judgment, may have substantial political impact or adversely affect mission performance (14 U.S.C. 145(c)).

(i) Approve retention of a rear admiral on active duty for a period not exceeding one year (14 U.S.C. 290(b)).

(j) Through the Chief Counsel, U.S. Coast Guard, settle and pay claims against the United States as provided by 10 U.S.C. 2733.

(k) Award life-saving medals and military decorations (except the Medal of Honor, the Distinguished Service Medal, and the Legion of Merit) and carry out the laws and Executive orders relating to those awards (14 U.S.C. 492a, 493, 494, 496, 497, 498, 500, 501, 502; Executive Order 4601, Mar. 1, 1926, as amended by Executive Order 7786 (3 FR 39); Executive Order 9158 (7 FR 3541), as amended by Executive Order 9242A (7 FR 7874); Executive Order 10637 (20 FR 7025); Executive Order 11016 (27 FR 4139); Executive Order 11046 (27 FR 8575); Executive Order 11448 (34 FR 915)).

(l) Carry out the functions vested in the Secretary by sections 104(i), 104(j), 311(b)(6), 311(p)(6), 312, and 402(b)(6) of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 862).

(m) Carry out the functions assigned to the Secretary by sections 2, 5, and 6 of Executive Order 11735, as amended by Executive Order 12418, assigning functions under the Federal Water Pollution Control Act, as amended (82 Stat. 862).

(n) Carry out the functions vested in the Secretary by the following statutes:

(1) Federal Boat Safety Act of 1971 (85 Stat. 213);

(2) Vessel Bridge-to-Bridge Radio-Telephone Act (85 Stat. 164);

(3) Pub. L. 92-339, relating to the licensing of personnel on certain towing vessels (86 Stat. 423);

(4) Port and Tanker Safety Act of 1978 (92 Stat. 1471), except sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 to the extent that those sections pertain to the operation of the St. Lawrence Seaway;

(5) Sections 104 (a) and (g), 107(c), 108, 201, and 302(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532) relating to ocean dumping;

(6) International Voyage Load Line Act of 1973 (Pub. L. 93-115);

(7) Intervention on the High Seas Act (Pub. L. 93-248) except section 13(a);

(8) Pub. L. 93-524 (88 Stat. 1694) which relates to waste materials on vessels (46 U.S.C. 77(e));

(9) Pub. L. 94-85 (89 Stat. 426), which relates to carriage of additional passengers on documented vessels in emergency situations;

(10)(i) Section 304(a)(1) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(a)(1)) insofar as it relates to the promulgation of joint regulations with the National Transportation Safety Board (NTSB) governing investigations of major marine casualties and casualties involving public and non-public vessels, and the conduct of accident investigations upon request of the Board;

(ii) Section 307 of the Independent Safety Board Act of 1974 (49 U.S.C. 1906) insofar as it relates to responses to NTSB recommendations regarding marine casualties;

(11) International Navigational Rules Act of 1977 (Pub. L. 95-75, 91 Stat. 308); and

(12) International Safe Container Act (Pub. L. 95-208, 91 Stat. 1475), except section 4(e);

(13) 14 U.S.C. 195, relating to instruction of foreign nationals at the Coast Guard academy;

(14) Inland Navigational Rules Act of 1980 (Pub. L. 96-591).

(o) Carry out the functions vested in the Secretary by 14 U.S.C. 475 and Executive Order 11645, 3 CFR 371 (1973), 37 FR 2923, February 10, 1972, relating to the rental of housing facilities at or near Coast Guard installations.

(p) Carry out the functions vested in the Secretary by Pub. L. 92-425 and Executive Order 11687 (37 FR 21479), relating to the Retired Serviceman's Survivor Benefit Plan.

(q) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to navigable waterways other than the St. Lawrence River.

(r) Carry out the functions vested in the Secretary by 14 U.S.C. 657, relating to schooling and transportation to schools for dependents of Coast Guard personnel.

(s) Carry out the functions and responsibilities vested in the Secretary by the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), except as reserved by § 1.44 (o) and delegated by § 1.53(c).

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 1801-1811, and 46 U.S.C. 170 to the extent they relate to regulations and exemptions governing the bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count, and regulations and exemptions governing ships' stores and supplies.

(u) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c) and 1809 and 1810, relating to investigations, records, inspections, penalties, and specific relief, so far as they apply to the transportation or shipment of hazardous materials by water.

(v) Carry out the functions vested in the Secretary by the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended; 16 U.S.C. 1801 *et seq.*) except that the authority to approve seizure of a foreign vessel may not be redelegated and shall be exercised in each instance only after consultation with the Department of State.

(w) Issue wage schedules for trades, crafts, and laboring employees in nonappropriated fund activities.

(x) Carry out the functions vested in the Secretary by 10 U.S.C. 2683 insofar as it relates to the relinquishment to a state of legislative jurisdiction of the United States over lands and interests under the control of the Coast Guard in that state.

(y) Carry out the functions and responsibilities vested in the Secretary by the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*) relating to rulemaking so far as it applies to liquefied natural gas facilities adjacent to the navigable waters of the United States: *Provided,* That such rulemaking is in accordance with the Memorandum of Understanding between the Coast Guard and Materials Transportation Bureau executed on February 7, 1978, for regulation of such facilities.

(z) Carry out the functions vested in the Secretary by the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended, titles III and VI of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), and Executive Order 12123, as amended by Executive Order 12418, except as reserved by § 1.44(p) and delegated by § 1.53(a)(6).

(aa) Carry out the functions vested in the Secretary by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(i)) for lands under the administration of the U.S. Coast Guard.

(bb) Carry out the functions vested in the Secretary by the Act of September 10, 1976 (90 Stat. 1236, 46 U.S.C. 420) relating to the issuance of permits exempting specific cargo-carrying vessels operating within the State of Alaska from all or part of 46 U.S.C. 88, 391, 391a, and 404 and the regulations issued thereunder.

(cc) Carry out the requirements of section 146 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689) relating to foreign-built hovercraft in Alaska.

(dd) Exercise all functions of the General Services Administrator pertaining to the acquisition of special purpose space in urban centers, as defined in 41 CFR 101-18.102, to house U.S. Coast Guard Recruiting Offices pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and to acquire such space by firm term leases up to five (5) years in accordance with the authority contained in section 210(h) (1) of the Federal Property and Administrative Services Act of 1949, as amended. Provided, that such authority is exercised in accordance with the Memorandum of Understanding between the Department of Transportaion and the General Services Administration executed on January 27, 1981, for implementation of this delegation.

(ee) Carry out all functions vested in the Secretary in any capacity by the Ocean Thermal Energy Conversion Act of 1980 (Pub. L. 96-320, August 1, 1980), except title II.

(ff) Carry out the functions vested in the Secretary by:

(1) Section 108(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9608(a)(3)), and by sections 7(b)(1), 7(b)(2), and 7(c) (2) of Executive Order 12580 relating to vessel financial responsibility; and

(2) Sections 2(e)(1), 2(e)(2), 2(i), 2(j)(1), 2(j)(2), 2(k), 3(a), 4(b)(1), 4(b)(2), 6(c), 9(d), 9(i), and 11(b)(2) of Executive Order 12580 relating to facilities and vessels under the jurisdiction, custody, or control of the Coast Guard.

(gg) Carry out the functions, relating to releases or threatened releases involving the coastal zone, Great Lakes waters, and ports and harbors vested in the Secretary by sections 2(f), 2(i), 2(j)(2), 2(k), 4(c)(1), 4(c)(2), 5(b), 6(c), 9(d), 9(i), and 11(b)(2) of Executive Order 12580 insofar as they relate to:

(1) Responses to releases or threats of releases from vessels;

(2) Emergency action concerning releases or threats of releases at facilities other than active or inactive "hazardous waste management facilities" (as defined in 40 CFR 270.2); and

(3) Emergency action concerning releases or threats of releases at active or inactive "hazardous waste management facilities" only when the Coast Guard On-Scene Coordinator determines that such action must be taken pending the arrival on scene of an Environmental Protection Agency (EPA) On-Scene Coordinator (OSC). Unless otherwise agreed upon by the EPA and Coast Guard, this authority will not be exercised unless the EPA OSC is scheduled to arrive on scene within 48 hours of notification of the release or threat of release.

As used in this paragraph "emergency action" includes any removal action which, in the view of the Coast Guard On-Scene Coordinator, must be taken immediately to prevent or mitigate immediate and significant danger to the public health, welfare, or the environment. Situations in which such actions may be taken include, but are not limited to, fire, explosions, and other sudden releases; human, animal, or food chain exposure to acutely toxic substance; and the contamination of a drinking water supply. All functions listed in this paragraph include the authority to contract for, obligate monies for, and otherwise arrange for and coordinate the responses included within such functions.

(hh) Carry out the functions vested in the Secretary by the Act to Prevent Pollution from Ships (October 21, 1980; Pub. L. 96-478; 94 Stat. 2297) except section 10(b) and (c) and except as limited by § 1.47(n), § 1.52(c), and § 1.66(u) of this title.

(ii) Carry out the functions vested in the Secretary by the Deep Seabed Hard Mineral Resources Act (June 21, 1980; Pub. L. 96-283; 94 Stat. 553), except section 118.

(jj) Carry out the functions vested in the Secretary to convene and approve a Coast Guard Reserve Policy Board as provided in 14 U.S.C. 703.

(kk) Carry out the functions vested in the Secretary by the Fisheries Amendments of 1982 (Pub. L. 97-389; 96 Stat. 1949) relating to implementation of the Convention for the Conservation of Salmon in the North Atlantic Ocean and to documentation and certification of inspection of certain vessels.

(ll) Carry out the functions assigned to the Secretary by section 4 of Executive Order 12418 of May 3, 1983 (48 FR 20891; May 10, 1983), relating to demonstration of financial responsiblity for vessels carrying oil loaded from the Trans-Alaska pipeline.

(mm)—(oo) [Reserved]

(pp) Except as specifically reserved in 49 CFR 1.44, carry out the responsibilities of, and exercise the authority of the Secretary contained in the Uniform Code of Military Justice, chapter 47 of title 10 United States Code, and the Manual for Courts-Martial, United States.

(qq) Carry out the functions and exercise the authority vested in the Secretary by 14 U.S.C. 659 relating to providing assistance to film producers and obtaining reimbusement for assistance provided.

(rr) Exercise the authority of the Secretary contained in 10 U.S.C. 1588 to accept voluntary services for a museum or a family support program operated by the Coast Guard; to determine which expenses are eligible for reimbursement; and to provide reimbursement from nonappropriated funds of incidental expenses incurred by persons providing voluntary services as an ombudsman or for a family service center program.

(ss) Carry out the functions and exercise the authority vested in the Secretary by chapter 125, title 46 U.S.C., to establish and maintain a vessel identification system and to charge fees to persons providing information to or requesting information from the system.

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e); 49 CFR 1.57(l); 49 U.S.C. 322)

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.46, see the List of CFR

Sections Affected in the Finding Aids section of this volume.

§ 1.47 Delegations to Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to:

(a) Carry out the powers and duties transferred to the Secretary of Transportation by, or subsequently vested in the Secretary by virtue of, section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)), including those pertaining to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of title 49 U.S.C. and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding section 902(h)), and XII of the Federal Aviation Act of 1958, as amended.

(b) Carry out title XIII of the Federal Aviation Act of 1958, as amended (72 Stat. 800; 49 U.S.C. 1531 *et seq.*), relating to aviation insurance.

(c) Carry out the functions vested in the Secretary by the Act of September 7, 1957 (71 Stat. 629; 49 U.S.C. 1324 note), as amended by section 6(a)(3)(B) of the Department of Transportation Act, relating to the guarantee of aircraft purchase loans, and those functions which relate to the issuance of obligations to finance the expenses of such guarantees.

(d) Administer Executive Orders 11419 and 11322 relating to prohibited aviation operations and the prohibited carriage of commodities and products to and from Southern Rhodesia. Carry out the functions vested in the Secretary by Executive Order 12183.

(e) Provide certain facilities and services to FAA employees and their dependents at remote locations (49 U.S.C. 1659).

(f) Carry out the functions vested in the Secretary by:

(1) The Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*), except sections 3 and 4 (49 U.S.C. 1702, 1703).

(2) Sections 208 and 209 of the Airport and Airway Revenue Act of 1970, as amended (49 U.S.C. 1742, 1742 note); and

(3) Sections 21, 22, 23(b), 24, and 25 of the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1346(a), 1348 note, 1713 note, 1356a, 1704).

(g) Carry out the functions vested in the Secretary by part B of title II of the Clean Air Act, as amended (84 Stat. 1703), and by 40 CFR part 87 as it relates to exemptions from aircraft air pollution standards.

(h) Carry out the functions of the Secretary under section 208 of the Appalachian Regional Development Act of 1965 (85 Stat. 168; 40 U.S.C. App. 208).

(i) Carry out the functions vested in the Secretary by section 902(h)(2) of the Federal Aviation Act of 1958, as amended, as it relates to enforcement of hazardous materials regulations as they apply to the transportation or shipment of such materials by air.

(j) Carry out the functions vested in the Secretary by 49 U.S.C. 1807 as it relates to the establishment of procedures for monitoring and enforcing provisions of regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

(k) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air.

(l) Serve, or designate a representative to serve, as Vice Chairman and alternate Department of Transportation member of the Interagency Group on International Aviation (IGIA) pursuant to interagency agreement of December 9, 1960, and Executive Order 11382, and provide for the administrative operation of the IGIA Secretariat.

(m) Carry out the functions vested in the Secretary by sections 4(a) and 5(c) of Executive Order 12316 of August 14, 1981 (46 FR 42237, Aug. 20, 1981) (delegating sections 107(c)(1)(c and 108(b), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1981, Pub. L. 96-510), insofar as they relate to aircraft.

(n) Carry out the functions vested i the Secretary by section 3(d) of th

Act to Prevent Pollution from Ships (33 U.S.C. 1902(d)) as it relates to ships owned or operated by the Federal Aviation Administration when engaged in noncommercial service.

(o) [Reserved]

(p) Carry out the functions vested in the Secretary by:

(1) Section 553(b) of Pub. L. 99-83 (99 Stat. 226), which relates to the authority of Federal Air Marshals to carry firearms and make arrests, in coordination with the General Counsel; and

(2) The following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(a), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs; subsection 1115(b), in coordination with the Assistant Secretary for Policy and International Affairs; and subsection 1115(e)(2)(A)(ii), in coordination with the General Counsel and the Assistant Secretary for Policy and International Affairs.

(q) Carry out all of the functions vested in the Secretary under section 404(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1374(d)), as amended by section 328(a) of the Department of Transportation and Related Agencies Appropriations Act of 1988 (Pub. L. 100-202).

(Secs. 3(e), 6(c), and 9(e), Department of Transportation Act (49 U.S.C. 1652(e), 1655(c), and 1657(e)); 49 U.S.C. 322; 49 CFR 1.57(l))

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.47, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to:

(a) Investigate and report on the safety compliance records of applicants seeking operating authority, or approval of transactions involving transfer of operating authority, from the Interstate Commerce Commission, and to intervene and present evidence concerning applicants' fitness in Commission proceedings under 49 U.S.C. 307, so far as it relates to motor carriers.

(b) Administer the following sections of title 23, U.S.C.:

(1)(i) 101(a); and

(ii) 101(b), (c), (d), and (e), except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(2) 103, except as it involves the substitution of non-highway public mass transit projects authorized by section (e)(4);

(3) 104, including the apportionment of funds for Federal-aid highways once Congress approves estimates submitted by the Secretary;

(4) 105, except as subsections (a) and (g) involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(5) 106, except subsections (a), (c), and (d) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(6) 107;

(7) 108, except as it involves mass transportaton projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(8) 109, except subsections (a), (g), and (h) as they involve mass transportation projects authorized by sections 103(e) (4), 142(a)(2), or 142(c);

(9) 110, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(10) 111;

(11) 112, 113, 114, except as they involve transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(12) 115;

(13) 116, except subsections (a) and (c) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(14) 117, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(15) 118, 119, 120;

(16) 121 and 122, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(17) 123;

(18) 124, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(19) 125, 126, and 127;

(20) 128, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(21) 129, 130, 131, 132, 134, 135, 136, 137, 138, and 139;

(22) 140, except paragraph (a) of this section, as it involved mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(23) 141, with the concurrence of the National Highway Traffic Safety Administrator as it relates to certification of the enforcement of speed limits;

(24) 142, except as it involves mass transportation projects authorized by subsections (a)(2) and (c) and by 103(e)(4);

(25) 143 and 144;

(26) 145, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(27) 146 through 152 and 155 through 157, inclusive;

(28) 154 and 158 each with the concurrence of the National Highway Traffic Safety Administrator;

(29) 201 through 205, 210, 212, 214 through 218, (Chapter 2);

(30) 301, 302, and 303;

(31) 304, 305, 306, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(32) 307 through 314 inclusive;

(33) 315 and 317, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(34) 318 through 321, inclusive; and

(35) 323 and 324, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 140, 142 through 145, 147 through 154, 167, and 171, and title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; and sections 502-504, title V, of the Highway Revenue Act of 1978.

(2) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93-87, 87 Stat. 250; Pub. L. 93-643, 88 Stat. 2281).

(3) The Federal-Aid Highway Act of 1970, as amended (except section 118) (84 Stat. 1713).

(4) The Federal-Aid Highway Act of 1968, as amended (82 Stat. 815);

(5) The Federal-Aid Highway Act of 1966, as amended (80 Stat. 766);

(6) The Federal-Aid Highway Act of 1962, as amended (76 Stat. 1145, 23 U.S.C. 307 note);

(7) The Federal-Aid Highway Act of 1956, as amended (70 Stat. 374);

(8) The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70);

(9) The Act of September 26, 1961, as amended (75 Stat. 670);

(10) The Highway Revenue Act of 1956, as amended (70 Stat. 387, 23 U.S.C. 120 note);

(11) The Highway Beautification Act of 1965, as amended (79 Stat. 1028, 23 U.S.C. 131 *et seq.*, notes);

(12) The Alaska Omnibus Act, as amended (73 Stat. 141, 48 U.S.C. 21 note prec.);

(13) The Joint Resolution of August 28, 1965, as amended (79 Stat. 578, 23 U.S.C. 101 *et seq.*, notes);

(14) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525(c));

(15) The Act of April 27, 1962 (76 Stat. 59);

(16) Reorganization Plan No. 7 of 1949 (63 Stat. 1070); and

(17) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280; 90 Stat. 425).

(18) The Federal-Aid Highway Act of 1982 (Pub. L. 97-327), except section 6 as it relates to matters within the primary responsibility of the Urban Mass Transportation Administrator.

(19) The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, as amended,

(i) Except sections 165 and 531 as they relate to matters within the primary responsibility of the Urban Mass Transportation Administrator; 105(f), 413; 414(b)(1) and (2); 421, 426, and Title III; and

(ii) Section 414(b)(1), with the concurrence of the National Highway Traffic Safety Administrator.

(20) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 132).

(d) [Reserved]

(e) Carry out 49 U.S.C. 3103 relating generally to investigation of the need for regulation of sizes, weights, and combinations of motor vehicles and qualifications and maximum hours of service of employees of motor carriers and motor private carriers.

(f) Carry out 49 U.S.C. 3102 relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment of motor carriers, motor private carriers and motor carriers of migrant workers.

(g) Carry out 49 U.S.C. 503 and 3104 relating generally to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles so far as they pertain to motor private carriers of property and motor carriers of migrant workers (except motor contract carriers).

(h)—(i) [Reserved]

(j) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965 (79 Stat. 5; 40 U.S.C. App.) except section 208.

(k) Initiate proceedings as a complainant under 49 U.S.C. 10925 to revoke, suspend or amend the certificates, permits or licenses of a motor carrier.

(l) Carry out the Act of September 21, 1966, Pub. L. 89-599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(m) Carry out the law relating to the Chamizal border highway (80 Stat. 1477).

(n) Carry out the Highway Safety Act of 1966, as amended (80 Stat. 731) and chapter 4 of title 23 U.S.C. as amended by section 207 of the Surface Transportation Assistance Act of 1978 for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(o) Exercise the authority vested in the Secretary by section 204(b) of the Federal Railroad Safety Act of 1970 (84 Stat. 972, 45 U.S.C. 433(b)) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction.

(p) Carry out the functions vested in the Secretary provided by 42 U.S.C. 4917 relating to procedures for the inspection, surveillance and measurement of commercial motor vehicles for compliance with interstate motor carrier noise emission standards and related enforcement activities including the promulgation of necessary regulations.

(q) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 8(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92-434, 86 Stat. 731).

(r) Carry out the functions vested in the Secretary by the following sections of the Urban Mass Transportation Act of 1964 as amended (78 Stat. 302, 49 U.S.C. 1601 *et seq.*):

(1) Sections 3(a)(3), 3(e)(1), 5(g)(1), and 8 as they relate to urban planning (49 U.S.C. 1602 (a)(3) and (e)(1), 1603(a), and 1604(g)(1); and 1604(l)).

(2) Section 12(c)(11) relating to approval of boundaries of urbanized areas (49 U.S.C. 1608(c)(11));

(3) Section 18 as it relates to the formula grant program for non-urbanized areas in the Commonwealth of Puerto Rico.

(s) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, January 4, 1975, 88 Stat. 2281).

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 1804(b) relating to consultation and cooperation with the Interstate Commerce Commission (ICC) concerning regulations governing the routing of hazardous materials by highway.

(u) Carry out the functions vested in the Secretary by 49 U.S.C. 1808 (a), (b), and (c), 1809 and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportaton of hazardous materials by highway.

(v) Carry out the functions vested in the Secretary by the Commercial Motor Vehicle Safety Act of 1986, title XII of Pub. L. 99-570, 100 Stat. 3207-170.

(w) Cary out the functions vested in the Secretary by section 30 of the Motor Carrier Act of 1980 (Pub. L. 96-296, 94 Stat. 820), as amended by section 108(b)(5) of Pub. L. 96-510, 94 Stat. 2767; section 406 of Pub. L. 97-424, 96 Stat. 2158; and section 222 of Pub. L. 98-554, 98 Stat. 2846 (49 U.S.C. 10927 note).

(x) Carry out the functions vested in the Secretary by sections 4(a) and (5)(c) of Executive Order 12316 of August 14, 1981 (46 FR 42237, August 20, 1981) (delegating sections 107(c)(1)(C) and 108(b), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2781), insofar as they relate to motor carriers.

(y) Carry out the functions vested in the Secretary by section 118 of the National Visitor Center Facilities Act of 1968 (Pub. L. 90-264, 82 Stat. 43), as added by the Union Station Redevelopment Act of 1981 (Pub. L. 97-125; 95 Stat. 1672), with respect to the completion of the parking facility and associated ramps at Union Station in Washington, D.C. (40 U.S.C. 818).

(z) Carry out the functions vested in the Secretary by sections 18 and 25(c) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, 96 Stat. 1102), as amended by section 224 of Pub. L. 98-554, 98 Stat. 2847 (49 U.S.C. 10927 note).

(aa) Carry out the functions vested in the Secretary by the Tandem Truck and Motor Carrier Safety Acts of 1984 (Pub. L. 98-554), except section 209.

(bb) Carry out the functions vested in the Secretary by Pub. L. 98-229, 98 Stat. 55, insofar as it relates to apportioning certain funds for construction of the Interstate Highway System in Fiscal Year 1985, apportioning certain funds for Interstate substitute highway projects, and increasing amounts available for emergency highway relief.

(cc) Prescribe regulations, as necessary, at parts 24 and 25 of this title, to implement Pub. L. 91-646, 84 Stat. 1894, and any amendments thereto, as appropriate, in coordination with the Assistant Secretary for Policy and International Affairs, and carry out all other functions vested in the Secretary by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894, and any amendments thereto.

(dd)—(ee) [Reserved]

(ff) Carry out the functions vested in the Secretary of Transportation by section 114 of the "Act Making Continuing Appropriations for Fiscal Year 1987 and for Other Purposes," Pub. L. 99-591, October 30, 1986, relating to construction of Interstate Highway H-3 in Hawaii.

(gg) Carry out all of the functions vested in the Secretary under section 324 of the Fiscal Year 1986 Department of Transportation Appropriations Act (Pub. L. 99-190, 99 Stat. 1288), notwithstanding the reservation of authority under § 1.44(j) of this part.

(49 U.S.C. 322, 49 CFR 1.57(l))

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.48, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to:

(a) Investigate and report on safety compliance records of applicants seeking railroad operating authority from the Interstate Commerce Commission, and to intervene and present evidence concerning applicants' fitness in Commission proceedings under 49 U.S.C. 1653(e), relating to railroads.

(b) Carry out the Act of September 30, 1965, as amended (79 Stat. 893, 49 U.S.C. 1631 *et seq.*), relating generally to high speed ground transportation, except issuance of reports required by section 13(c) (49 U.S.C. 1643(c)).

(c) Carry out the following laws relating generally to safety appliances and equipment on railroad engines and cars, and protection of employees and travelers:

(1) The Act of March 2, 1893, as amended (27 Stat. 531, 45 U.S.C. 1 *et seq.*);

(2) The Act of March 2, 1903, as amended (32 Stat. 943, 45 U.S.C. 8 *et seq.*);

(3) The Act of April 14, 1910, as amended (36 Stat. 298, 45 U.S.C. 11 *et seq.*);

(4) The Act of May 30, 1908, as amended (35 Stat. 476, 45 U.S.C. 17 *et seq.*);

(5) The Act of February 17, 1911, as amended (36 Stat. 913, 45 U.S.C. 22 *et seq.*);

(6) The Act of March 4, 1915, as amended (38 Stat. 1192, 45 U.S.C. 30);

(7) Reorganization Plan No. 3 of 1965 (79 Stat. 1320, 45 U.S.C. 22 note);

(8) Joint Resolution of June 30, 1906, as amended (34 Stat. 838, 45 U.S.C. 35);

(9) The Act of May 27, 1908, as amended (35 Stat. 325, 45 U.S.C. 36 *et seq.*);

(10) The Act of March 4, 1909, as amended (35 Stat. 965, 45 U.S.C. 37); and

(11) The Act of May 6, 1910, as amended (36 Stat. 350, 45 U.S.C. 38 *et seq.*).

(d) Carry out the Act of March 4, 1907, as amended (34 Stat. 1415, 45 U.S.C. 61 *et seq.*), relating generally to hours of service of railroad employees.

(e) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to railroad bridges not over navigable waterways.

(f) Carry out section 25 of the Interstate Commerce Act, as amended (49 U.S.C. 26), relating generally to railroad safety appliances, methods, and systems.

(g) Exercise the administrative powers under the Interstate Commerce Act with respect to powers and duties pertaining to railroad safety transferred to the Secretary (49 U.S.C. 1655(f)).

(h) Operate and administer the Alaska Railroad under the Act of March 12, 1914, as amended (38 Stat. 305), and Executive Order 11107 (28 FR 4225 (1963)).

(i) Make individual and general changes in freight rates and passenger fares for the Alaska Railroad, without power to redelegate authority for general changes in freight rates and passenger fares.

(j) Promote and undertake research and development relating to rail matters generally (49 U.S.C. 1653(a), 1657(e)(1), 1657(n)(1), and 1657(q)(1)).

(k) Carry out the functions vested in the Secretary by subtitle B of the National Visitor Center Facilities Act of 1968, as added by the Union Station Redevelopment Act of 1981 (Pub. L. 97-125; 95 Stat. 1667) except section 114(e) and such parts of section 118 as provided for the completion of the parking facility and associated ramps at Union Station in Washington, DC.

(l) Exercise the authority vested in the Secretary by the Emergency Rail Services Act of 1970 (Pub. L. 91-663) except the authority to make findings required by section 3(a) of that Act and the authority to sign guarantees of certificates issued by trustees.

(m) Carry out the functions vested in the Secretary by the Federal Railroad Safety Act of 1970 (title II of Pub. L. 91-458); 84 Stat. 971, 45 U.S.C. 421 et. seq.), except section 204(b) (84 Stat. 972, 45 U.S.C. 433(b)) with respect to highway, traffic, and motor vehicle safety and highway construction.

(n) Carry out the functions vested in the Secretary by the Emergency Rail Facilities Restoration Act of 1972 (Pub. L. 92-591).

(o) Carry out the functions vested in the Secretary by subsection (b) (except as it relates to conducting consultations with the Administrator of the Environmental Protection Agency) and (c) of section 17 of the Noise Control Act of 1972 (Pub. L. 92-574).

(p) Carry out the functions vested in the Secretary by sections 201(i)(3); 202(b)(7); 203, except authority to issue subpoenas; 210; 212; 213; 215; 402; 403; and 601 of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236) as amended by the Rail Transportation Improvement Act (Pub. L. 94-555).

(q) Carry out the functions vested in the Secretary by subsections 4 (h) and (i) of the Department of Transportation Act, as amended (49 U.S.C. 1653(h), (i)).

(r) Carry out the functions vested in the Secretary by 49 U.S.C. 1804(b) relating to consultation and cooperation with the Interstate Commerce Commission concerning regulations governing the routing of hazardous materials by railroad.

(s) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809 and 1810, relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified or sold for use in the bulk transportation of hazardous materials by railroad.

(t) Carry out the functions vested in the Secretary by sections 204(c); except authority to issue subpoenas; 402; 403; 502; 503; 504; 505; 506, except (c); 507; 508; 511; 512; 513; 515; 517; 606; 610; 703; 704, except (c)(1); and 705; 707; 901; 905, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, section 5 of the Department of Transportation Act (49 U.S.C. 1654), except authority to issue subpoenas.

(u) Carry out functions vested in the Secretary by sections 17(a) and (b) (as they relate to consultations with the Administrator of the Environmental Protection Agency) of the Noise Control Act of 1972 (Pub. L. 92-574, 49 U.S.C. 1431).

(v) Carry out the functions vested in the Secretary by the Rock Island Railroad Transition and Employee Assistance Act (title I of Pub. L. 96-254) and by section 18 of the Milwaukee Railroad Restructuring Act (49 U.S.C. 916).

(w) Carry out the functions vested in the Secretary by section 305 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 745).

(x) Carry out the functions vested in the Secretary by sections 4(a) and 5(c) of Executive Order 12316 of August 14, 1981 (46 FR 42237, Aug. 20, 1981) (delegating sections 107(c)(1)(c) and 108(b), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1981, Pub. L. 96-510), insofar as they relate to rolling stock.

(y) Carry out the functions vested in the Secretary by the Northeast Rail Service Act of 1981 (Pub. L. 97-35).

(z) Carry out the functions vested in the Secretary by section 3 of the Bridge Act of 1906, as amended (33 U.S.C. 493), relating to disputes over the terms and compensation for use of railroad bridges built under the Act.

(aa) Carry out the functions vested in the Secretary by titles II through VII of the Rail Safety and Service Improvement Act of 1982 (Pub. L. 97-468), which relates to rail safety, rail finances, and the transfer of The Alaska Railroad to the State of Alaska.

(bb) Carry out the functions vested in the Secretary by section 4031 of the Budget Reconciliation Act of 1986 (Pub. L. 99-509), which relates to the abolition of the United States Railway Association, and the execution of the functions and duties of the Association transferred to the Secretary, effective April 1, 1987.

(cc) Carry out the functions vested in the Secretary by section 18 (g) and (h) of the Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342).

(dd) Carry out the function vested in the Secretary by section 1163 of the Bankruptcy Code (11 U.S.C. Section 1163), which relates to the nomination of trustee for rail carriers in reorganization, with the concurrence of the Office of the General Counsel.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.49, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.50 Delegation to the National Highway Traffic Safety Administrator.

The National Highway Traffic Safety Administrator is delegated authority to:

(a) Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

(b) Carry out the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.), except for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(c) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)).

(d) Exercise the authority vested in the Secretary by section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)) with respect to laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(e) Carry out the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note).

(f) Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act of 1972, as amended (15 U.S.C. 1901 et seq.), except section 512.

(g) Administer the following sections of title 23, United States Code, with the concurrence of the Federal Highway Administrator:

(1) 141, as it relates to certification of the enforcement of speed limits;

(2) 154 (a), (b), (d), (e), (f), (g) and (h); and

(3) 158.

(h) Carry out the consultation functions vested in the Secretary by Executive Order 11912, as amended.

(i) Carry out section 209 of the Surface Transportation Assistance Act of 1978, as amended (23 U.S.C. 401 note) and section 165 of the Surface Transportation Assistance Act of 1982, as amended (23 U.S.C. 101 note), with respect to matters within the primary responsibility of the National Highway Traffic Safety Administrator.

(j) Administer section 414(b)(1) of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. 2314) with the concurrence of the Federal Highway Administrator, and section 414(b)(2).

(k) Carry out section 2(c) of the Truth in Mileage Act of 1986 (15 U.S.C. 1988 note).

(l) Carry out section 204(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17 (101 Stat. 132) with the coordination of the Federal Highway Administrator.

[Amdt. 1-226, 53 FR 23122, June 20, 1988]

§ 1.51 Delegations to Urban Mass Transportation Administrator.

The Urban Mass Transportation Administrator is delegated authority to exercise the functions vested in the Secretary by:

(a) The Urban Mass Transportation Act of 1964, as amended (78 Stat. 302, 49 U.S.C. 1601 *et seq.*), except section 18 as it relates to the formula grant program for non-urbanized areas in the Commonwealth of Puerto Rico and section 22, relating to intercity bus service.

(b) Section 1 of Reorganization Plan No. 2 of 1968 (84 Stat. 1369).

(c) Section 10 of the Urban Mass Transportation Assistance Act of 1970, Pub. L. 91-453, 84 Stat. 962, 968).

(d) Sections 3 and 9 through 15 of the National Capital Transportation Assistance Act of 1969, as amended (D.C. Code, § 1-2441 et seq).

(e) The following sections of title 23, United States Code:

(1) 103 as it involves the withdrawal of Interstate routes and the substitution of non-highway public mass transit projects authorized by subsection (e)(4);

(2) 101(a) as it involves approval of boundaries of urban and urbanized areas, 104(f)(4), 105(d), 106(b) as it in-

volves the Federal-aid urban system, and 134; and

(3) 101 (b), (c), (d), and (e); 105 (a) and (g); 106 (a), (c) and (d); 108; 109 (a), (g), and (h); 110; 112; 113; 114; 116 (a) and (c); 117; 121; 122; 124; 128; 140(a); 142; and 145 as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(f) Sections 140, 146, 147, 164 and 165 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93-87, Title I, 87 Stat. 250; Pub. L. 93-643, 88 Stat. 2281).

(g) Section 813 of the Housing and Community Development Act of 1974 (Pub. L. 93-383).

(h) Section 107 of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503, November 26, 1974).

(i) Title II of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503, November 26, 1974), except sections 204 and 205.

(j) Sections 804, insofar as it relates to 45 U.S.C. 744(e)(5); and 805, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210).

(k) Section 148 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280, 90 Stat. 425).

(l) The following sections of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689): 155, 316, 320, and Title IV, as amended (as it relates to matters within the primary responsibility of the Urban Mass Transportation Administrator).

(m) Section 601(d) of the Rail Passenger Service Act, as amended.

(n) Section 2 of Pub. L. 98-229, 98 Stat. 55, insofar as it relates to apportioning certain funds for Interstate substitute transit projects.

[Amdt. 1-157, 45 FR 83408, Dec. 18, 1980, as amended by Amdt. 1-168, 47 FR 16632, Apr. 19, 1982; Amdt. 1-180, 48 FR 15476, Apr. 11, 1983; Amdt. 1-187, 48 FR 52678, Nov. 21, 1983; Amdt. 1-191, 49 FR 6908, Feb. 24, 1984; Amdt. 1-203, 50 FR 30275, July 25, 1985]

§ 1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

The Administrator of the Saint Lawrence Seaway Development Corporation is delegated authority to:

(a) Carry out the functions vested in the Secretary by sections 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of the Port and Tanker Safety Act of 1978 (92 Stat. 1471) as they relate to the operation of the St. Lawrence Seaway.

(b) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to the St. Lawrence River.

(c) Carry out the functions vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships (33 U.S.C. 1902(d)) as it relates to ships owned or operated by the Corporation when engaged in noncommercial service.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by 45 FR 48630, July 21, 1980; Amdt. 1-167, 47 FR 11677, Mar. 18, 1982]

§ 1.53 Delegations to the Administrator of the Research and Special Programs.

Administration. The Administrator of the Research and Special Programs Administration is delegated authority to exercise powers and perform duties, including duties under the specified statutes as follows:

(a) *Pipelines.* (1) Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*).

(2) Mineral Leasing Act, as amended (Pub. L. 93-153, 30 U.S.C. 185).

(3) Deepwater Port Act of 1974 (Pub. L. 93-627, 33 U.S.C. 1501 *et seq.*) relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

(4) Section 5 of the International Bridge Act of 1972 (Pub. L. 92-434, 33 U.S.C. 535) as it relates to pipelines not over navigable waterways.

(5) Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 U.S.C. 2001 *et seq.*).

(6) Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) as amended, with respect to establishment, enforcement and review of regulations concerning pipeline safety.

(7) Sections 4(a) and 5(c) of Executive Order 12316 of August 14, 1981 (46 FR 42237, August 20, 1981) (delegating

sections 107(c)(1)(c) and 108(b), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act of 1981, Pub. L. 96-510), insofar as they relate to pipelines.

(b) *Hazardous materials.* (1) Sections 101-112 of the Hazardous Materials, Transportation Safety Act of 1974 (49 U.S.C. 1801-1811), except as delegated by §§ 1.46(t), 1.47(j), 1.48(u), and 1.49(s).

(2) Section 170 (7), (10), and (11) of title 46, United States Code, except as delegated by § 1.46(t).

(3) Serves as the Department's point of contact and consults with the Environmental Protection Agency on matters arising under section 3003 of the Resources Conservation and Recovery Act (42 U.S.C. 6923) and section 9 of the Toxic Substances Control Act (15 U.S.C. 2608).

(4) Sections 601(c) and 902(h)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1421 and 1472(h)(1), respectively), as they relate to regulations governing the transportation of hazardous materials by air.

(c) *Passenger and cargo security.* (1) Serve as the Department's point of contact in relationships with Government, state, regional, local and private groups and organizations in matters relative to the Department-wide program for enhancing the safety and security of passengers and cargo in transit.

(d) *Intermodal transport.* (1) Section 4(e) of the International Safe Container Act (Pub. L. 95-208, 91 Stat. 1475).

(e) [Reserved]

(f) *Working Capital Fund for Financing the Activities of the Transportation Systems Center.* (1) Section 207 of Pub. L. 96-254 (49 U.S.C. 1657(r)), authorizing the Secretary to establish a working capital fund for financing the activities of the Transportation Systems Center.

(g) *Aviation information.* (1) 49 U.S.C. 329(b)(1), relating to collection and dissemination of information on civil aeronautics;

(2) Section 4(a)(7) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443), relating to the extension of unsecured credit to political candidates; and

(3) Sections 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407 (a) and (d) (relating to requiring the keeping of information and the forms in which it is to be kept) and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1324, 1374, 1377 (a) and (d), and 1386) as appropriate to carrying out the responsibilities under this paragraph.

[Amdt. 1-130, 43 FR 5516, Feb. 9, 1978, as amended by Amdt. 1-136, 43 FR 17360, Apr. 24, 1978; Amdt. 1-137, 44 FR 2395, Jan. 11, 1979; Amdt. 1-153, 45 FR 14576, Mar. 6, 1980; Amdt. 1-158, 46 FR 10919, Feb. 5, 1981; Amdt. 1-166, 46 FR 63294, Dec. 31, 1981; Amdt. 1-196, 49 FR 31290, Aug. 6, 1984; Amdt. 1-199, 49 FR 50996, Dec. 31, 1984]

§ 1.54 Delegations to all Secretarial Officers.

(a) This section sets forth general delegations to the Deputy Secretary, the Deputy Under Secretary, the General Counsel, the Inspector General and the Assistant Secretaries.

(b) Each officer named in paragraph (a) of this section is delegated authority to:

(1) Redelegate and authorize successive redelegations of authority granted by the Secretary within their respective organizations, except as limited by law or specific administrative reservation, including authority to publish those redelegations in appendix A of this part.

(2) Authorize and approve official travel (except foreign travel) and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of the Secretary. This authority may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

(3) Communicate directly with chairmen of Field Coordination Groups provided such communications are largely informational in character and do not conflict with program responsi-

bilities of the operating administrations.

(4) Establish ad hoc committees for specific tasks within their assigned staff area.

(5) Establish, modify, extend, or terminate standing committees within their specific areas of responsibility when directed or authorized to do so by the Secretary.

(6) Designate members of interagency committees when such committees are specifically concerned with responsibilities of direct interest to their office.

(7) Exercise the following authorities with respect to executive level positions (GS-16, 17, or 18 or equivalent) within their respective areas of responsibility:

(i) Determine how executive level positions will be filled; i.e., by reassignment, promotion, appointment.

(ii) Establish selection criteria to be used in identifying eligible candidates.

(iii) Confer with the Administrators on selection criteria and candidates for an executive level position that is a counterpart of an activity or position in the Office of the Secretary.

(iv) Recommend final selection for executive level positions, subject to review by the Executive Committee of the Departmental Executive Personnel Board and approval by the Secretary and the Civil Service Commission.

(v) Serve as ad hoc member of the Departmental Executive Personnel Board at the call of the Chairman and serve on the Board's Executive Committee whenever matters involving their respective offices or a functional counterpart thereof in an operating administration are presented to the Executive Committee for its consideration.

(8) Enter into inter- and intra-departmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to office directors or other comparable levels and to contracting officers.

(9) Administer and perform the functions described in their respective functional statements.

(10) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated.

(49 U.S.C. 1657(e)(1))

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-114, 41 FR 1288, Jan. 7, 1976; Amdt. 1-157, 45 FR 83408, Dec. 18, 1980; Amdt. 1-159, 46 FR 22593, Apr. 20, 1981]

§ 1.55 Delegations to Deputy Secretary.

The Deputy Secretary may exercise the authority of the Secretary except where specifically limited by law, order, regulations, or instructions of the Secretary. In addition, the Deputy Secretary is delegated authority to:

(a) Exercise executive control over the Departmental Planning-Programming-Budgeting System.

(b) Serve as Chairman of the Departmental Executive Personnel Board and its Executive Committee.

(c) Originate direct correspondence to chairmen of Field Coordination Groups on overall Departmental matters.

(d) Approve the establishment, modification, extension, or termination of:

(1) Department-wide (intra-department) committees affecting more than one program.

(2) OST-sponsored interagency committees.

(3) All advisory committees (including industry advisory committees) except those sponsored by field activities of the operating administrations.

(e) Approve the designation of:

(1) Departmental representatives and the chairman for interagency committees sponsored by the Office of the Secretary.

(2) Departmental representatives on all advisory committees except those sponsored by a field component of one of the operating administrations or the Materials Transportation Bureau.

(3) Departmental members for international committees.

(f) Authorize and approve official travel and transportation for self, subordinates, and others performing services for or in cooperation with the Office of the Secretary; and authorize and approve official foreign travel of all Departmental personnel and others performing travel for the Department.

(g) Serve as the representative of the Secretary on the board of directors of the National Railroad Passenger Corporation and carry out the functions vested in the Secretary as a member of the board by section 303 of the Rail Passenger Service Act of 1970 (84 Stat. 1330).

(h) Serve as the representative of the Secretary as incorporator, member of the acting board of directors, member of the board of directors, and member of the executive committee of the board of directors, of the United States Railway Association and when so serving carry out the functions vested in the Secretary in each capacity by title II of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236), as amended.

(i) Serve as the representative of the Secretary as incorporator, member of the interim board of directors established by section 301(c) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236), and member of the board of directors, of the Consolidated Rail Corporation and when so serving carry out the functions vested in the Secretary in each capacity by title III of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-114, 41 FR 1288, Jan. 7, 1976; Amdt. 1-116, 41 FR 20680, May 20, 1976; Amdt. 1-126, 41 FR 56327, Dec. 28, 1976; Amdt. 1-157, 45 FR 83408, Dec. 18, 1980; Amdt. 1-165, 46 FR 55266, Nov. 9, 1981]

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to:

(a) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4327) within the Department of Transportation.

(b) Oversee the implementation of section 4(f) of the Department of Transportation Act of 1969 (49 U.S.C. 1653) and concur in determinations under section 4(f) for certain major project actions.

(c) Represent the Secretary of Transportation on various interagency boards, committees, and commissions, to include: Architectural and Transportation Barriers Compliance Board; Advisory Council on Historic Preservation; Migratory Bird Conservation Commission; National Highway Safety Advisory Committee; Interagency Committee on Emergency Medical Services; the Federal Council on the Arts and the Humanities; and the Trade Policy Review Group.

(d) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (80 Stat. 934) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(e) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Orders T-1 and T-2 (32A CFR, chapter VII) under the Act of September 8, 1950, as amended (64 Stat. 798, 50 U.S.C. App. 2061 *et seq.*) and Executive Order 10480.

(f) Serve as Department of Transportation member of the Interagency Group on International Aviation and, pursuant to Executive Order 11382, serve as Chair of the Group.

(g) Serve as second alternate representing the Secretary of Transportation to the Water Resources Council, as mandated under the Department of Transportation Act of 1966, Pub. L. 89-670 and to the Trade Policy Committee as mandated by Reorganization Plan 3 of 1979 and Executive Order 12188.

(h) Carry out the functions vested in the Secretary by section 656 of the Department of Energy Organization Act which pertains to planning and implementing energy conservation matters with the Department of Energy. Serves as the Department's principal conservation officer.

(i) As supplemented by 14 CFR part 385, as limited below, and except as provided in §§ 1.53(g), 1.57a, and 1.61(d) of this title, carry out the functions transferred to the Department from the Civil Aeronautics Board under the following statutes:

(1) 49 U.S.C. 1551(b); and

(2) Section 4(a) (1) through (4), (6), and (8) through (10) of the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443; October 4, 1984).

Insofar as this delegation authorizes review of decisions of the Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs under § 1.56a of this title, the authority is limited to approving any such decision or remanding it for reconsideration by the Designated Senior Career Official, with a full written explanation of the basis for the remand.

(j) Carry out the functions vested in the Secretary by:

(1) The following subsections of section 1115 of the Federal Aviation Act of 1958, as amended, which relates to the security of foreign airports: Subsection 1115(e)(1), in coordination with the General Counsel and the Federal Aviation Administrator; and paragraph 1115(e)(3), in coordination with the General Counsel, the Federal Aviation Administrator, the Assistant Secretary for Governmental Affairs, and the Assistant Secretary for Administration.

(2) Carry out the following statutory provisions relating to consumer protection:

(i) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443), relating to enforcement of the Consumer Credit Protection Act;

(ii) Sections 101(3) (relating to relieving certain carriers from provisions of the Federal Aviation Act), 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407(a) (relating to requiring the production of information, entering carrier property, and inspecting records), 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301(3), 1324, 1374, 1377 (a) and (e), 1381, and 1386) as appropriate to the consumer protection functions in this paragraph.

(k) Carry out the functions vested in the Secretary of Transportation by 49 U.S.C. 1607c (section 314 of the "Surface Transportation and Uniform Relocation Assistance Act of 1987", Pub. L. 100-17, April 2, 1987), relating to the Transportation Centers Grant Program, with concurrence of the Deputy Secretary.

[Amdt. 1-157, 45 FR 83408, Dec. 18, 1980, as amended by Amdt. 1-199, 49 FR 50996, Dec. 31, 1984; Amdt. 1-205, 50 FR 52468, Dec. 24, 1985; Amdt. 1-208, 51 FR 20831, June 9, 1986; Amdt. 1-213, 51 FR 34219, Sept. 26, 1986; Amdt. 1-219, 52 FR 30688, Aug. 17, 1987]

§ 1.56a Delegations to the Designated Senior Career Official, Office of the Assistant Secretary for Policy and International Affairs.

The Designated Senior Career Official in the Office of the Assistant Secretary for Policy and International Affairs is delegated exclusive authority to make decisions in all hearing cases to select a carrier for limited-designation international route authority, and in any other case that the Secretary designates, under the authority transferred to the Department from the Civil Aeronautics Board described in §§ 1.56(i) and 1.61(d) of this title: this includes the authority to adopt, reject, or modify recommended decisions of adminstrative law judges.

[Amdt. 1-199, 49 FR 50996, Dec. 31, 1984]

§ 1.57 Delegations to General Counsel.

The General Counsel is delegated authority to:

(a) Conduct all rule-making proceedings, except the issuance of final rules, under specific laws relating generally to standard time zones and daylight saving (advanced standard) time.

(b) Determine the practicability of pplying the standard time of any tandard time zone to the movements f any common carrier engaged in nterstate or foreign commerce and ssue operating exceptions in any case n which the General Counsel determines that it is impractical to apply he standard time.

(c) Provide and coordinate the Department's counseling service to employees on questions of conflict of interest and other matters of legal import covered by Departmental regulations on employee responsibility and conduct. Assure that counseling and interpretations on these matters are available to designated Deputy Counselors of the Department. Serve as the Department's designee to the Civil Service Commission on these matters.

(d) Serve as the alternate representative of the Secretary on the Board of Directors of the National Railroad Passenger Corporation when so designated by the Secretary or Deputy Secretary and carry out the functions vested in the Secretary as a member of the board by section 303 of the Rail Passenger Service Act of 1970 (84 Stat. 1330).

(e) Review and take final action on referrals of the findings of the Board for Correction of Military Records of the Coast Guard (except with respect to those matters on which the Secretary's authority to take final action is exercised by the Board pursuant to 33 CFR 52.35-15) and the Coast Guard Discharge Review Board.

(f) Approve vacation of suspension of dismissal of military personnel (10 U.S.C. 872(b)).

(g) Grant permission, under specific circumstances, to deviate from a policy or procedure prescribed by part 9 of the regulations of the Office of the Secretary (part 9 of this subtitle) with respect to testimony of OST employees as witnesses in legal proceedings, the serving of legal process and pleadings in legal proceedings involving the Secretary or his Office, and the production of records of that Office pursuant to subpoena.

(h) Prepare proposed Executive orders and proclamations (including transmittal documents), effect appropriate Departmental coordination, and determine whether the transmittal to the Office of Management and Budget should be submitted over the Secretary's signature or the General Counsel's.

(i) Emboss and affix the official Departmental seal to appropriate documents and other materials, for all purposes for which authentication by seal is required.

(j) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (80 Stat. 934) relating to safety fitness of an applicant, decide on requests to intervene or appear before courts or agencies to present the views of the Department, subject to the concurrence of other interested staff elements in the Office of the Secretary.

(k) Exercise the authority delegated to the Department by the Assistant Attorney General, Land and Natural Resources Division, in his order of October 2, 1970, to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Department. Redelegation and successive redelegations of this authority may only be made to attorneys within the Department.

(l) Issue regulations making editorial changes or corrections in the Regulations of the Office of the Secretary.

(m) Review and take final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3).

(n) Consider, ascertain, adjust, determine, compromise, and settle for an amount not exceeding $25,000, any tort claim arising from the activities of any employee of the Office of the Secretary. Request the approval of the Attorney General for any such award, compromise, or settlement in excess of $25,000 (28 U.S.C. 2672).

(o) Conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources Act (June 21, 1980).

(p) Grant or deny petitions for extension of time to file a document under part 202 of title 46.

(q) [Reserved]

(r) Exercise the review authority delegated to the Secretary by the President in Executive Order 12597 of May 13, 1987.

(10 U.S.C. 1552; 49 U.S.C. 1655(b); 49 U.S.C. 322; 49 CFR 1.57(l))

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.57, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.57a Delegations to the Deputy General Counsel.

The Deputy General Counsel is delegated authority to appear on behalf of the Department on the record in hearing cases, and to initiate and carry out enforcement actions on behalf of the Department, under the authority transferred to the Department from the Civil Aeronautics Board as described in §§ 1.56(i) and 1.61(d) of this title. This includes the authority to compromise penalties under 49 U.S.C. 1471(a)(1); to issue appropriate orders, including cease and desist orders, under 49 U.S.C. 1482(c); to require the production of information and enter carrier property and inspect records under 49 U.S.C. 1377 (a) and (e), and to inquire into the management of the business of a carrier under 49 U.S.C. 1385, as appropriate to these responsibilities. In carrying out these functions, the Deputy General Counsel is not subject to the supervision of the General Counsel.

[Amdt. 1-212, 51 FR 32320, Sept. 11, 1986]

§ 1.57b Delegations to the Associate General Counsel.

Administer 5 U.S.C. 552 and 49 CFR part 7 in connection with the records of the Office of the Secretary (including the Office of the Inspector General) and issue procedures to ensure uniform Departmental implementation of statutes and regulations regarding public access to records.

[Amdt. 1-228, 54 FR 10010, Mar. 9, 1989]

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

The Assistant Secretary for Budget and Programs is delegated authority to:

(a) Exercise day-to-day operating management responsibility over the Office of Programs and Evaluation and the Office of Budget.

(b) Direct and manage the Departmental planning, evaluation, and budget activities.

(c) Request apportionment or reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(d) Issue allotments or allocations of funds to components of the Department.

(e) Authorize and approve official traver and transportation for staff members of the Immediate Office of the Secretary including authority to sign and approve related travel orders and travel vouchers, but not including requests for overseas travel.

(f) Issue monetary authorizations for use of reception and representation funds.

(g) Act for the Secretary and Deputy Secretary with respect to certain budgetary and administrative matters relating to the Immediate Office of the Secretary.

[Amdt. 1-130, 42 FR 58754, Nov. 11, 1977. Redesignated by Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.59 Delegations to the Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following:

(a) *Acquisition.* (1) Exercise procurement authority with respect to requirements of the Office of the Secretary.

(2) Make the required determinations with respect to mistakes in bids relative to sales of personal property conducted by the Office of the Secretary without power of redelegation.

(3) Carry out the functions vested in the Secretary by sections 3 and 4(b) (as appropriate) of Executive Order 11912.

(4) Carry out the functions delegated to the Secretary from time to time by the Administrator of General Services to lease real property for Department use.

(b) *Personnel.* (1) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(2) Develop and implement an affirmative action plan in the Office of the Secretary to assure equal employment opportunity.

(3) Serve as Vice Chairman of the Departmental Executive Resources Board and its Executive Resources Review Committee.

(4) Exercise emergency authority to hire without the prior approval of the Deputy Secretary normally required by Departmental procedures implementing general employment limitations when in the judgment of the Assistant Secretary immediate action is necessary to effect the hire and avoid the loss of a well-qualified job applicant, and/or similar reasons.

(5) Review proposals of the Office of the Secretary for each new appointment or transfer to:

(i) Verify the essentiality of the position, and

(ii) Assure compliance with the Action Plan for Equal Opportunity of the Office of the Secretary.

(6) Approve employment of experts and consultants in accordance with 5 U.S.C. 3109.

(7) Serve as Vice Chairman of the Departmental Executive Personnel Board and its Executive Committee.

(8) Issue final interpretations for the Department and its administrations on matters arising under section 7117 of title VII of the Civil Service Reform Act of 1978.

(9) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System, except as delegated to the Commandant of the Coast Guard at § 1.46.

(c) *Finance.* (1) Administer the financial and fiscal affairs of the Office of the Secretary (other than those for which the Assistant Secretary for Budget and Programs is responsible), in accordance with 31 U.S.C. 3512.

(2) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary and imprest fund cashiers for the Departmental headquarters. (Redelegation to the Director of Financial Management is contained in subpart C, § 1.59a.)

(3) In accordance with 31 U.S.C. 3527, grant or recommend relief from accountability for losses or deficiencies of disbursing officers, cashiers, or other accountable officers as follows:

(i) Grant relief for losses or deficiencies of less than $500 for which charges or exceptions have not been raised by the General Accounting Office.

(ii) Recommend relief by the Comptroller General for all other losses or deficiencies.

(4) Settle and pay claims by employees of the Office of the Secretary, except at the Transportation System Center, for personal property losses, as provided by 31 U.S.C. 241(b).

(5) Waive claims and make refunds in connection with claims for erroneous overpayment of pay and allowances to an employee of the Office of the Secretary in the amounts aggregating not more than $500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR parts 91, 92, and 93. This authority may be redelegated only to the Director of Financial Management.

(6) Compromise, suspend collection action on, or terminate claims of the United States not exceeding $20,000 which are referred to, or arise out of the activities of, the Office of the Secretary.

(7) Determine the existence and amount of indebtedness and the method of collecting repayments from employees of the Office of the Secretary and collect repayments accordingly, as provided by 5 U.S.C. 5514. This authority may be redelegated only to the Director of Financial Management.

(8) Sign Budget Execution reports required by OMB Circular A-34, for the Office of the Secretary. (Redelega-

tion to the Director of Financial Management is contained in subpart C, § 1.59a.)

(9) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer. (Redelegation to the Director of Financial Management is contained in subpart C, § 1.59a.)

(10) Approve cash purchases of emergency passenger transportation services costing over $100 under FPMR G-72, as amended.

(11) Perform accounting and related functions in support of the essential air service program.

(12) Carry out the functions and obligations assigned to the Secretary with respect to the Prompt Payment Act, Pub. L. 97-177.

(13) Carry out the functions and duties assigned to the Secretary with respect to the Debt Collection Act of 1982, Pub. L. 97-365.

(d) *Special funds.* Except as otherwise delegated, establish or operate, or both, such special funds as may be required by statute or by administrative determination. This includes such special funds as the Working Capital Fund (49 U.S.C. 1657(j)).

(e) *Security.* (1) Represent the Secretary on the National Communications Security Committee and Interdepartmental Committee on Internal Security.

(2) Issue identification media "by direction of the Secretary".

(3) Classify information in the interests of national defense.

(4) Take certain classified actions on behalf of the Department in connection with counter-audio programs.

(5) Authorize exceptions to investigative standards for National Defense Executive Reservists.

(6) Determine when emergencies, other than attack on the United States, justify activation of Personnel Security Regulations issued by the Secretary.

(7) Approve exceptions to the Personnel Security regulations issued by the Secretary.

(8) Request the Office of Personnel Management to modify investigative requirements in other areas.

(f) *Printing.* (1) Request approval of the Joint Committee on Printing, Congress of the United States, for any procurement or other action requiring Committee approval.

(2) Certify the necessity for Departmental periodicals and request approval of the Director of the Office of Management and Budget (OMB Circular No. A-3 Revised as of Sept. 8, 1960).

(g) *Document authentication.* Emboss and affix the official Departmental seal to appropriate documents and other materials, for all purposes for which authentication by seal is required.

(h) *Foreign travel.* Review written requests for modification to the Department's foreign travel plan approved by the Office of Management and Budget.

(i) *Gifts and bequests.* Carry out the functions vested in the Secretary by section 9(m) of the Department of Transportation Act (Pub. L. 89-670).

(j) *Equal employment opportunity.* Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary.

(k) *Building management.* Carry out the functions vested in the Secretary by sections 1(b) and 4(b) (as appropriate) of Executive Order 11912.

(l) *Privacy.* Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

(m) *Hearings.* Provide logistical and administrative support to the Department's Office of Hearings.

(n) *Paperwork reduction.* Carry out the functions and responsibilities assigned to the Secretary with respect to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(o) *Federal real property management.* Carry out the functions assigned to the Secretary with respect to Executive Order 12512 of April 28, 1985.

(p) *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894.* Except as provided in §§ 1.45, 1.48 and 49 CFR 25.302, the functions, powers, and duties of the Secretary of Transportation, with respect to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, are delegated to the Assistant Secretary for Administration with respect to programs administered by the Office of the Secretary. This authority is subject to the requirements listed in § 1.45 that govern all Operating Administrations' authority with respect to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(q) *Regulations.* Issue Department of Transportation procurement regulations, subject to the following limitation:

(1) *Coordination.* The views of the General Counsel, the interested administrations and other offices will be solicited in the development of the procurement regulations. In commenting upon proposed provisions for the procurement regulations, the administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidances which they propose to issue at the administration level.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975; as amended by Amdt. 1-216, 52 FR 9864, Mar. 27, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.59, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1.59a Redelegations by the Assistant Secretary for Administration.

(a) The Assistant Secretary for Administration has redelegated to the Director of Acquisition and Grant Management authority to procure and authorize payment for property and services for the Office of the Secretary, with power to redelegate and authorize successive redelegations.

(b) The Assistant Secretary for Administration has redelegated to the Director of Personnel authority to:

(1) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(2) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System, except as delegated to the Commandant of the Coast Guard at § 1.46 of this part.

(c) The Assistant Secretary for Administration has redelegated to the Director of Financial Management authority to:

(1) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary and imprest fund cashiers for the Departmental Headquarters.

(2) Certify to the validity of obligations as required by 31 U.S.C. 200 and to the adequacy of bond coverage for the designations under section 160(c)(2).

(3) Sign reports on Budget Execution as required by OMB Circular A-34 (Revised).

(4) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(5) Process essential air service payments.

(6) Approve claims of OST employees allowable under 31 U.S.C. 3721 for amounts of $500 or less.

[Amdt. 1-209, 51 FR 29233, Aug. 15, 1986, as amended by Amdt. 1-232, 54 FR 46616, Nov. 6, 1989]

§ 1.60 Delegations to the Inspector General.

The Inspector General is delegated, and has agreed to carry out, the following:

(a) *Aviation economics.* The conduct of audits under 49 U.S.C. 1389; and 49 U.S.C. 1377(e).

[Amdt. 1-199, 49 FR 50997, Dec. 31, 1984]

§ 1.61 Delegations to Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

(a) Establish procedures for responding to Congressional correspondence.

(b) Serve as the Department's point of contact in relationships with public and private organizations and groups devoted to consumer and community services or affairs.

(c) Serve as coordinator for intra-Departmental consumer affairs programs.

(d) As supplemented by 14 CFR part 385, carry out the following authority transferred to the Department from the Civil Aeronautics Board—

(1) Assist consumers in dealings with the air transportation industry;

(2) Assist State and local organizations in handling airline consumer complaints;

(3) Investigate consumer complaints regarding the air transportation industry and, as appropriate, recommend enforcement actions to be brought by the Deputy General Counsel;

(4) [Reserved]

(5) Carry out the following statutory provisions:

(i) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98-443), relating to enforcement of the Consumer Credit Protection Act;

(ii) Sections 204 (a) and (b) (relating to taking such actions as may be necessary to carry out responsibilities under the Federal Aviation Act), 407 (a) and (e) (relating to requiring the production of information, entering carrier property, and inspecting records), and 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1324 (a) and (b), 1377 (a) and (e), and 1381) as appropriate to the consumer information and assistance functions in this paragraph.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980, as amended by Amdt. 1-199, 49 FR 50997, Dec. 31, 1984; Amdt. 1-205, 50 FR 52468, Dec. 24, 1985]

§ 1.62 Delegations to the Director of Small and Disadvantaged Business Utilization.

The Director of Small and Disadvantaged Business Utilization is delegated authority to:

(a) Exercise Departmental responsibility for the implementation and execution of functions and duties under sections 8 and 15 of the Small Business Investment Act, as amended (15 U.S.C. 637 and 644).

(b) Carry out the functions vested in the Secretary by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.63 Delegations to Assistant Secretary for Public Affairs.

The Assistant Secretary for Public Affairs is delegated authority to:

(a) [Reserved]

(b) Monitor the overall public information program and review and approve Departmental informational materials having policy-making ramifications before they are printed and disseminated.

(c) Carry out the functions vested in the Secretary by section 4(b) (as appropriate) of Executive Order 11912.

(d) Carry out the functions to promote carpooling and vanpooling which were vested in the Federal Energy Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act and transferred to the Department of Transportation by section 310 of the Department of Energy Organization Act of 1977.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-118, 41 FR 35849, Aug. 25, 1976; Amdt. 1-157, 45 FR 83409, Dec. 18, 1980; Amdt. 1-184, 48 FR 44079, Sept. 27, 1983; Amdt. 1-228, 54 FR 10010, Mar. 9, 1989]

§ 1.64 Delegations to the Science and Technology Advisor.

The Science and Technology Advisor is delegated authority to:

(a) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Office of the President.

(b) Serve as Chairperson of the Department of Transportation's Research and Development Management Council.

(c) Serve as Chairperson of the Department of Transportation Navigation Council.

[Amdt. 1-201, 50 FR 7782, Feb. 26, 1985]

§ 1.65 Authority to classify information.

(a) E.O. 12356 confers upon the Secretary of Transportation authority to originally classify information as Secret and Confidential with further authorization to delegate this authority. (No official of the Department of Transportation has authority to originally classify information as Top Secret.)

(b) The following delegations of this authority, which may not be redelegated, are hereby made:

(1) *Office of the Secretary* (*OST*). Chief, Security Staff.

(2) *U.S. Coast Guard* (*USCG*). The Commandant; Chief, Office of Operations.

(3) *Federal Aviation Administration* (*FAA*). The Administrator; Director of Civil Aviation Security.

(4) *Maritime Administration* (*MARAD*). The Administrator; Associate Administrator for Policy and Administration (Confidential only); Director, Office of International Activities (Confidential only); Chief, Division of National Security Plans (Confidential only).

(c) Authority of originally classify information as Secret or Confidential is delegated to the following officials to become effective automatically upon declaration of civil readiness level Initial Alert or the comparable military readiness level. If invoked, this authority is automatically terminated when both civil and military levels return to the level of Communications Watch or comparable readiness state.

(1) *OST*. Deputy Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration.

(2) *USCG*. Vice Commandant; Chief of Staff; Commander, Atlantic Area; Commander, Pacific Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities, Europe; Chief, Intelligence and Security Division.

(3) *FAA*. Deputy Administrator; Directors, FAA Regions and Centers.

(4) *MARAD*. Deputy Administrator; Region Directors; Heads of ALFA, BRAVO, and CHARLIE Emergency Teams when activated.

(d) Although the delegations of authority are expressed above in terms of positions, the authority is personal and is vested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions, a designation in writing of an individual to act in the absence of one of these officials, or the exercise by an individual of the powers of one of these officials by operation of law, however, conveys the authority to originally classify information.

(e) Previous delegations of authority to Department of Transportation officials to originally classify information as Secret and Confidential are hereby rescinded.

[Amdt. 1-195, 49 FR 26594, June 28, 1984]

§ 1.66 Delegations to Maritime Administrator.

With the exception of those authorities delegated to the Maritime Subsidy Board in § 1.67 of this title, the Maritime Administrator is delegated authority to:

(a) Carry out sections 9, 12, 14a, 21a, 37, 40, 41, and 42 of the Shipping Act, 1916, as amended (46 U.S.C. 801 *et seq.*);

(b) Carry out the Merchant Marine Act, 1920, as amended (46 U.S.C. 861 *et seq.*), including the Ship Mortgage Act, 1920, as amended (46 U.S.C. 921 *et seq.*);

(c) Carry out the Merchant Marine Act, 1928, as amended (46 U.S.C. 891 *et seq.*);

(d) Carry out section 7 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 843 *et seq.*);

(e) Carry out the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 *et seq.*); except the authority delegated to the Administrator of the National Oceanic and Atmospheric Administration relating to the establishment of capital construction fund agreements under section 607 thereof and the granting of financing guarantees under title XI thereof, with respect to vessels in the fishing trade or industry;

(f) Carry out the Merchant Ship Sales Act of 1946, as amended (50 U.S.C. App. 1735 *et seq.*);

(g) Carry out the Suits in Admiralty Act (1920), as amended (46 U.S.C. 741 *et seq.*);

(h) Carry out the Civilian Nautical School Act, 1940 (46 U.S.C. 1331 *et seq.*);

(i) Carry out the Act of June 2, 1951 (46 U.S.C. 1241a) regarding the "Vessel Operations Revolving Fund";

(j) Carry out the Act of August 9, 1954 (50 U.S.C. 196 *et seq.*) commonly called the Emergency Foreign Vessels Acquisition Act;

(k) Carry out the Act of July 24, 1956 (46 U.S.C. 249 *et seq.*) commonly called the Merchant Marine Medals Act of 1956;

(l) Carry out the Maritime Academy Act of 1958, as amended (46 U.S.C. 1381 *et seq.*);

(m) Carry out the Act of May 16, 1972, as amended (86 Stat. 140) authorizing sale or purchase of certain passenger vessels,

(n) Carry out the Act of August 22, 1972 (86 Stat. 618) authorizing sale of Liberty ships for use as artificial reefs,

(o) Carry out section 717 of the Act of October 26, 1972 (86 Stat. 1184) commonly known as the Department of Defense Appropriations Act, 1973, and similar subsequent enactments, with respect to transferring or otherwise making available vessels under the jurisdiction of the Maritime Administration to another Federal agency or, similarly, accepting vessels from another Federal agency,

(p) [Reserved]

(q) Exercise the authority delegated by the Administrator of the General Services Administration, dated August 15, 1967, to appoint uniformed guards as special police officers, with such powers as are conferred in the Act of June 1, 1948 (62 Stat. 281), as amended, for protection duties on those parcels of property at the United States Merchant Marine Academy, Kings Point, New York, which are not protected by General Services Administration guards, and over which the Federal Government has exclusive or concurrent jurisdiction,

(r) Carry out the responsibilities of the National Shipping Authority (initially established by the Secretary of Commerce effective March 13, 1951) in the capacity of Director, National Shipping Authority,

(s) Carry out the Maritime Education and Training Act of 1980 (46 U.S.C. 1295), as amended,

(t) Carry out all other activities previously vested in the Secretary of Commerce and transferred pursuant to Pub. L. 97-31.

(u) Carry out the functions vested in the Secretary by section 3(d) of the Act to Prevent Pollution from Ships (33 U.S.C. 1902(d)) as it relates to ships owned or operated by the Maritime Administration when engaged in noncommercial service.

[Amdt. 1-164, 46 FR 47459, Sept. 28, 1981, as amended by Amdt. 1-167, 47 FR 11677, Mar. 18, 1982; Amdt. 1-192, 49 FR 12706, Mar. 30, 1984]

§ 1.67 Delegations to Maritime Subsidy Board.

(a) The Maritime Subsidy Board is delegated authority to:

(1) Carry out all functions previously vested in the Secretary of Commerce pursuant to section 105(1) (except the last proviso thereto and readjustments in determinations of operating cost differentials not requiring a hearing and contractual changes reducing or realigning service requirements not involving additional subsidy or requiring a section 605(c) hearing under the Act (46 U.S.C. 1175(c)), section 105(2), and, insofar as applicable to these functions, section 105(3) of Reorganization Plan No. 21 of 1950, and section 202(b)(1) of Reorganization Plan No. 7 of 1961, except investigations, hearings and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales, and minimum working conditions referred to in section 301(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 *et seq.*).

(2) Carry out all functions previously vested in the Secretary of Commerce pursuant to section 103(e) of Reorganization Plan No. 7 of 1961 and section 202(b)(2) (except requiring the filing of reports, accounts, records, rates, charges, and memoranda under

section 21 of the Shipping Act, 1916, as amended, and making reports and recommendations to Congress) and section 202(b)(3) of Reorganization Plan No. 7 of 1961, insofar as said functions relate to the functions described in paragraph (a)(1) of this section.

(3) Execute and sign, by and through any member of the Board or the Secretary or an Assistant Secretary of the Board, contracts and other documents authorized or approved by the Board pursuant to paragraphs (a)(1) and (a)(2) of this section. The execution of such contracts or documents may be attested, under the seal of the Department of Transportation, by the Secretary or an Assistant Secretary of the Maritime Subsidy Board.

(b) The Maritime Subsidy Board may exercise other authorities of the Secretary of Transportation as applicable to performing the functions assigned to the Board in this part.

(c) The Board is composed of the Maritime Administrator, the Deputy Maritime Administrator, and the Chief Counsel of the Administration, and during a vacancy in any one of those offices, the person acting in such capacity shall be a member of the Board, unless the Secretary of Transportation designates another person. In case there still is a vacancy in the Board or in the absence or disability of one of its members, the Secretary of the Maritime Administration and Maritime Subsidy Board, or any other persons designated by the Secretary of Transportation, shall act as a member or members of the Board. Each member of the Board, while serving in that capacity, shall act pursuant to direct authority from the Secretary of Transportation and exercise judgment independent of authority otherwise delegated to the Maritime Administrator. The Maritime Administrator or the Acting Maritime Administrator serves as Chairperson of the Board. The concurring votes of two members shall be sufficient for the disposition of any matter which may come before the Board.

(d) The Chairperson of the Maritime Subsidy Board may make use of officers and employees of the Maritime Administration to perform activities for the Board. Employees of the Maritime Administration may be designated as the Secretary or Assistant Secretaries of the Board.

[Amdt. 1-164, 46 FR 47460, Sept. 28, 1981, as amended by Amdt. 1-211, 51 FR 29471, Aug. 18, 1986]

§ 1.68 Delegations to Director of Commercial Space Transportation.

The Director of Commercial Space Transportation is delegated authority to—

(a) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities.

(b) Carry out the functions vested in the Secretary by the Commercial Space Launch Act (Pub. L. 98-575; October 30, 1984).

[Amdt. 1-202, 50 FR 9036, Mar. 6, 1985]

APPENDIX A TO PART 1—DELEGATIONS AND REDELEGATIONS BY SECRETARIAL OFFICERS

1. *Director of Budget.* The Assistant Secretary for Budget and Programs has redelegated to the Director of Budget authority to:

(a) Request apportionment and reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(b) Issue allotments or allocations of funds to components of the Department.

2. *Chief Counsel, U.S. Coast Guard.* (a) The General Counsel, as Judge Advocate General for the U.S. Coast Guard, has delegated to the Chief Counsel, U.S. Coast Guard, pursuant to the Uniform Code of Military Justice, chapter 47 of title 10, United States Code, authority to exercise the following powers and duties:

(1) The authority to recommend assignment for duty of judge advocates under Article 6(a), section 806(a) of title 10, United States Code.

(2) The authority to make field inspections in connection with the administration of military justice under Article 6(a) section 806(a) of Title 10, United States Code.

(3) The authority to designate military judges; to make assignments of, and exercise direct responsibility for, military judges;

and to assign, or approve the performance of, other duties of a judicial or nonjudicial nature by military judges under Article 26(c), section 826(c) of title 10, United States Code.

(4) The authority to forward to a Court of Military Review records that must be referred to a Court of Military Review under Article 66(b), section 866(b) of title 10, United States Code.

(5) The authority to instruct the convening authority to take action in accordance with the decision of the Court of Military Review or dismiss the charges under Article 66(e), section 866(e) of title 10, United States Code.

(6) The authority to modify or vacate findings and sentences in cases not reviewed by a Court of Military Review under Article 69, section 869 of title 10, United States Code.

(7) The authority to certify counsel as competent to perform the duties of trial counsel and defense counsel of a general court-martial under 10 U.S.C. 827(b), Art. 27(b) UCMJ.

(8) The authority to detail appellate Government counsel and appellate defense counsel to perform duties in connection with the review of court-martial cases by the Court of Military Review, the Court of Military Appeals and the Supreme Court.

(9) The authority to perform any other duty and exercise any other power which the General Counsel is authorized or required to perform under the Uniform Code of Military Justice or the Manual for Courts-Martial, with the exception of the following which are reserved to the General Counsel or his or her delegatee within the Office of the General Counsel:

(i) Authority to certify commissioned officers as qualified for duty as military judges under Article 26(b), section 826(b) of title 10, United States Code.

(ii) Authority to establish a Court of Military Review and designate a chief judge of the court under Article 66(a), section 866(a) of title 10, United States Code.

(iii) Authority to order cases sent to the Court of Military Appeals under Article 67(b)(2), section 867(b)(2) of title 10, United States Code.

(iv) Authority to examine records of general courts-martial not reviewed under Article 66, section 866 of title 10, United States Code, and modify or set aside the findings or the sentence, or refer the record to the Court of Military Review under Article 69(a), section 869(a) of title 10, United States Code.

(v) Authority to prescribe rules not inconsistent with the Manual for Courts-Martial to govern the professional supervision and discipline of military trial and appellate judges, judge advocates, and other lawyers who practice in proceedings governed by the UCMJ and Manual for Courts-Martial.

(vi) Authority to make the recommendation of the Judge Advocate General in a court-martial case requiring approval by the Secretary or the President.

(vii) Authority to approve a vacation of supension of dismissal of military personnel.

(b) The authority delegated by paragraph (a)(3) of this section may be redelegated only to the Deputy Chief Counsel.

(c) The Chief Counsel shall make an annual summary report of his actions taken under paragraph (a)(6) of this section of this delegation to the General Counsel of the Department of Transportation (including the number of cases subject to that authority, the number of applications for review filed, and the disposition thereof) for inclusion, as appropriate, in the Judge Advocates General and Court of Military Appeals report to Congress required by Article 67(g), section 867(g) of title 10, United States Code.

3. *Chief Counsels.* The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by Amendment 1-41 to part 1 of title 49, Code of Federal Regulations, 35 FR 17653, November 17, 1970, as follows:

Section 855 of the Revised Statutes, as amended by Pub. L. 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency to the title to land being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 FR 16084; 28 CFR 0.66). The Assistant Attorney General, Land and Natural Resources Division, has further delegated certain responsibilities in connection with the approval of the sufficiency of the title to land to the Department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provision of Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

The Chief Counsels of the United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, the St. Lawrence Seaway Development Corporation, Maritime Administration, and Research and Special Programs Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

If his organization does not have an attorney experienced and capable in the examination of title evidence, a Chief Counsel may, with the concurrence of the General Counsel, request the Attorney General to (1) furnish an opinion as to the validity of a title to real property or interest therein, or (2) provide advice or assistance in connection with determining the sufficiency of the title.

(49 CFR 1.45(a) and 1.53(a); 49 U.S.C. 322)

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting the Appendix to Part 1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 3—OFFICIAL SEAL

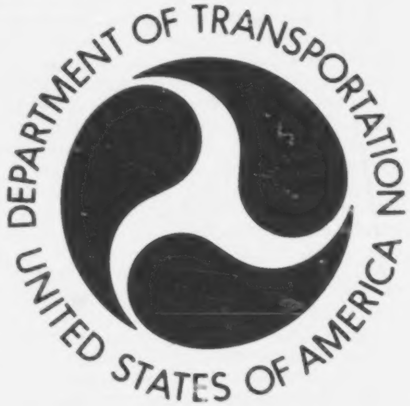
Sec.
3.1 Description.
3.3 Authority to affix seal.
3.5 Use of the Seal.

AUTHORITY: Sec. 9(k), 49 U.S.C. 1657(k).

SOURCE: Amdt. 3-3, 45 FR 75666, Nov. 17, 1980, unless otherwise noted.

§ 3.1 Description.

The official seal of the Department of Transportation is described as follows: A white abstract triskelion figure signifying motion appears within a circular blue field. The figure is symmetrical. The three branches of the figure curve outward in a counter-clockwise direction, each tapering almost to a point at the edge of the field. Surrounding the blue circle is a circular ring of letters. The upper half of the ring shows the words "Department of Transportation". The lower half of the ring shows the words "United States of America". The letters may be shown in either black or medium gray. The official seal of the Department is modified when embossed. It appears below in black and white.



§ 3.3 Authority to affix seal.

(a) The following officials of the Department of Transportation are authorized to affix the official seal of the Department of Transportation to appropriate documents and other materials of the Department, for all purposes, including those authorized by 28 U.S.C. 1733(b): The General Counsel, the Assistant Secretary for Administration, the Commandant of the Coast Guard, the Federal Aviation Administrator, the Federal Highway Administrator, the Federal Railroad Administrator, the Urban Mass Transportation Administrator, the National Highway Traffic Safety Administrator, the Maritime Administrator, the Research and Special Programs Administrator, the Inspector General, and the Chairman, Board of Contract Appeals.

(b) The officers named in paragraph (a) of this section may redelegate, and authorize redelegations of, this authority.

[Amdt. 3-3, 45 FR 75666, Nov. 17, 1980, as amended by Amdt. 3-4, 46 FR 42272, Aug. 20, 1981]

§ 3.5 Use of the Seal.

(a) The Seal is the official emblem of the Department of Transportation and its use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside of the Department may be made only with the Department's prior written approval.

(c) Requests by any person or organization outside of the Department for permission to use the Seal must be made in writing to the Assistant Secretary for Administration, 400 Seventh St., SW., Washington, DC 20590, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the Seal shall be essentially for informational purposes. The Seal may not be used on any article or in any manner which may discredit the Seal or reflect unfavorably upon the Department or which implies Departmental endorsement of commercial products or services, or of the user's policies or activities. Specifically, permission may not be granted under this section for use:

(1) On souvenir or novelty items of an expendable nature;

(2) On toys, gifts, or premiums;

(3) As a letterhead design;

(4) On menus, matchbook covers, covers, calendars, or similar items;

(5) To adorn civilian clothing; or

(6) On athletic clothing or equipment.

(e) Where necessary to avoid any prohibited implication or confusion as to the Department's association with the user, an appropriate legend will be prescribed by the Department for prominent display in connection with the permitted use.

(f) Falsely making, forging, counterfeiting, mutilating, or altering the Seal, or knowingly using or possessing with fraudulent intent any altered Seal is punishable under section 506 of title 18, United States Code.

PART 5—RULEMAKING PROCEDURES

Subpart A—General

Sec.
5.1 Applicability.
5.3 Initiation of rulemaking.
5.5 Participation by interested persons.
5.7 Regulatory docket.

Subpart B—Petitions for Rulemaking or Exemptions

5.11 Filing of petitions.
5.13 Processing of petitions.

Subpart C—Procedures

5.21 General.
5.23 Contents of notices.
5.25 Petitions for extension of time to comment.
5.27 Consideration of comments received.
5.29 Additional rulemaking proceedings.
5.31 Hearings.
5.33 Adoption of final rules.
Appendix A to Part 5

Authority: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657).

Source: 32 FR 10363, July 14, 1967, unless otherwise noted.

Subpart A—General

§ 5.1 Applicability.

(a) This part prescribes general rulemaking procedures that apply to the issue, amendment, and repeal of rules of the Secretary of Transportation. It does not apply to rules issued by the National Transportation Safety Board, U.S. Coast Guard, Federal Aviation

Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, or St. Lawrence Seaway Development Corporation.

(b) For the purposes of this part, *Secretary* means the Secretary of Transportation or the Under Secretary of Transportation, or any of the following to whom the Secretary has delegated authority to conduct rulemaking proceedings:

(1) Any Assistant Secretary.

(2) The General Counsel.

Any of these officers may redelegate that authority to the head of any office who reports to him.

(c) Records relating to rule-making proceedings are available for inspection as provided in part 7 of this subtitle.

[32 FR 10363, July 14, 1967, as amended by Amdt. 5-2, 35 FR 5331, Mar. 31, 1970; Amdt. 5-3, 36 FR 430, Jan. 13, 1971]

§ 5.3 Initiation of rulemaking.

The Secretary initiates rulemaking on his own motion. However, in doing so, he may, in his discretion, consider the recommendations of other agencies of the United States and of other interested persons.

§ 5.5 Participation by interested persons.

Any person may participate in rulemaking proceedings by submitting written information or views. The Secretary may also allow any person to participate in additional rulemaking proceedings, such as informal appearances or hearings, held with respect to any rule.

§ 5.7 Regulatory docket.

(a) Records of the Office of the Secretary of Transportation concerning rule-making actions, including notices of proposed rule making, comments received in response to those notices, petitions for rule making or exemption, petitions for rehearing or reconsideration, grants and denials of exemptions, denials of petitions for rule making, and final rules are maintained in current docket form in the Office of the General Counsel.

(b) Any person may examine any docketed material at that office and may obtain a copy of any docketed material upon payment of the prescribed fee.

Subpart B—Petitions for Rulemaking or Exemptions

§ 5.11 Filing of petitions.

(a) Any person may petition the Secretary to issue, amend, or repeal a rule, or for a permanent or temporary exemption from any rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Docket Clerk, Office of the General Counsel, Department of Transportation, Washington, DC 20590;

(2) Set forth the text or substance of the rule or amendment proposed, or of the rule from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;

(4) Contain any information and arguments available to the petitioner to support the action sought; and

(5) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption.

§ 5.13 Processing of petitions.

(a) *General.* Each petition received under § 5.11 of this part is referred to the head of the office responsible for the subject matter of that petition. No public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Secretary determines that the petition contains adequate justification, he initiates rulemaking action under subpart C of this part or grants the exemption, as the case may be.

(c) *Denials.* If the Secretary determines that the petition does not justify initiating rule-making action or granting the exemption, he denies the petition.

(d) *Notification.* Whenever the Secretary determines that a petition should be granted or denied, the office concerned and the Office of the General Counsel prepare a notice of that grant or denial for issuance to the petitioner, and the Secretary issues it to the petitioner.

Subpart C—Procedures

§ 5.21 General.

(a) Unless the Secretary finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rule making is issued and interested persons are invited to participate in the rulemaking proceedings with respect to each substantive rule.

(b) Unless the Secretary determines that notice and public rulemaking proceedings are necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rulemaking proceedings.

(c) In his discretion, the Secretary may invite interested persons to participate in the rulemaking proceedings described in § 5.29 of this subpart.

§ 5.23 Contents of notices.

(a) Each notice of proposed rulemaking is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects or issues involved or the substance or terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 5.25 Petitions for extension of time to comment.

(a) Any person may petition the Secretary for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition must be submitted in duplicate not later than 3 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Secretary grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

§ 5.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered so far as possible without incurring additional expense or delay.

§ 5.29 Additional rulemaking proceedings.

The Secretary may initiate any further rulemaking proceedings that he finds necessary or desirable. For example, he may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

§ 5.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Secretary designates a representative to conduct any hearing held under this part. The General Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 5.33 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The rule is then submitted to the Secretary for his consideration. If the Secretary adopts the rule, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

APPENDIX A TO PART 5

Pursuant to § 5.1(b), the following officials of the Office of the Secretary of Transportation are authorized to conduct rulemaking proceedings under this part, as specified in this appendix:

(1) The General Counsel is authorized to conduct all rule-making proceedings, except the issuance of final rules, under the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 261-264); the Uniform Time Act of 1966 (80 Stat. 107, 15 U.S.C. 260-267); and section 6(e)(5) of the Department of Transportation Act (80 Stat. 939, 49 U.S.C. 1655 (e)(5)).

(2) The General Counsel is authorized to determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce, and, under section 2 of the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 262), to issue operating exceptions in any case in which he determines that it is impractical to apply the standard time.

[Amdt. 5-1, 32 FR 11473, Aug. 9, 1967]

PART 6—IMPLEMENTATION OF EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart A—General Provisions

Sec.
6.1 Purpose of these rules.
6.3 When the Act applies.
6.5 Proceedings covered.
6.7 Eligibility of applications.
6.9 Standards for awards.
6.11 Allowable fees and expenses.
6.13 Delegations of authority.

Subpart B—Information Required from Applicants

6.17 Contents of application.
6.19 Net worth exhibit.
Sec.
6.21 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

6.23 Filing and service of documents.
6.25 Answer to application.
6.27 Comments by other parties.
6.29 Settlement.
6.31 Further proceedings.
6.33 Decision.
6.35 Agency review.
6.37 Judicial review.
6.39 Payment of award.

AUTHORITY: Pub. L. 96-481, 94 Stat. 2325.

SOURCE: 48 FR 1070, Jan. 10, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 6.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications":) before government agencies, such as the Department of Transportation or any of its operating administrations. An eligible party may receive an award when it prevails over the Department of Transportation or any of its operating administrations unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this agency will use to make them. The use of the term "Department", in this rule, will be understood to mean the Department of Transportation or any of its operating administrations, unless otherwise specified. The term "agency counsel" will be understood to mean counsel for the Department of Transportation or any of its operating administrations.

§ 6.3 When the Act applies.

The Act applies to any adversary adjudication pending before this agency at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984.

§ 6.5 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department of Transportation. These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." For the Department of Transportation, the types of proceedings generally covered include: Coast Guard suspension or revocation of licenses, certificates or documents under 46 U.S.C. 239; 46 CFR part 5; National Highway Traffic Safety Administration (NHTSA) fuel economy enforcement under 15 U.S.C. 2001; (49 CFR part 511); Federal Highway Administration (FHWA) driver qualification and compliance order proceedings under 49 U.S.C. 655; (49 CFR part 386).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 6.7 Eligibility of applications.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to an adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in paragraph (b) of this section.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees.

(3) A charitable or other tax-exempt organization as described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with a net worth of not more than $5 million and not more than 500 employees.

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was designated.

(d) An applicant who owns an unincorporated business will be considered an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The number of employees of an applicant includes all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(h) An applicant who appears *pro se* in a proceeding is ineligible for award of attorney fees. However, eligibility for other expenses is not affected by *pro se* representation.

§ 6.9 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified or special circumstances make the award sought unjust. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Department of Transportation, where it has initiated the proceeding, or on the appropriate operating administration, such as Coast Guard. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 6.11 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents or expert witnesses.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. This amount shall include all other expenses incurred by the attorney or agent in connection with the case. No award to compensate an expert witness may exceed the highest market rate at which the Department pays expert witnesses, or $24.09 per hour, whichever is less.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after designation of a proceeding.

§ 6.13 Delegations of authority.

The Secretary of Transportation delegates to the head of each operating administration of this Department the authority to take final action, other than rulemaking, on matters pertaining to the Act in actions that require section 554 proceedings. The head of each operating administration may redelegate this authority.

Subpart B—Information Required from Applicants

§ 6.17 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of employees of the applicant and describing briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

§ 6.19 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in this part) when the proceeding was designated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall be included in the public record of the proceeding.

§ 6.21 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(e) The administrative law judge may, within his or her discretion, make a determination as to whether a study, conducted by the applicant, was necessary to the preparation of the applicant's case.

Subpart C—Procedures for Considering Applications

§ 6.23 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 6.25 Answer to application.

(a) Within 30 calendar days after service of an application, the agency counsel may file an answer to the application. Unless the agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award request.

(b) If agency counsel and applicant believe that they can reach a settlement concerning the award, the agency counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested an identify the facts relied on in support of the Department's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Department shall include with the answer either supporting affidavits or a request for further proceedings under § 6.3.

§ 6.27 Comments by other parties.

Any party to a proceeding, other than the applicant and the Department may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application.

§ 6.29 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and the agency counsel agree on a proposed settlement of an award before an application has been filed the application shall be filed with the proposed settlement.

§ 6.31 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing.

Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 6.33 Decision.

The administrative law judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall also include, if at issue, findings on whether the Department's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment or any award made among the agencies, and shall explain the reasons for the allocation made.

§ 6.35 Agency review.

Where Department review of the underlying decision is permitted, either the applicant or agency counsel, may seek review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative. If neither the applicant nor the agency counsel seeks review within 30 days after the decision is issued, it shall become final.

§ 6.37 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 6.39 Payment of award.

An applicant seeking payment of an award from the Department of Transportation or any of its operating administrations under this part shall submit a copy of the Department of Transportation's or any of its operating administration's final decisions granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The copy of the decision and the statement should be submitted to the head of the affected operating administration or the Secretary of Transportation, where the Department of Transportation, Office of the Secretary, has initiated the proceedings.

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—Applicability and Policy

Sec.
7.1 Applicability.
7.3 Policy.
7.5 Definitions.

Subpart B—General

7.11 Administration of part.
7.13 Records containing both available and unavailable information.
7.15 Protection of records.

Subpart C—Time Limits

7.21 Initial determination.
7.23 Final determination.
7.25 Extension.

Subpart D—Publication in the Federal Register

7.31 Applicability.
7.33 Publication required.

Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations: Indices

7.41 Applicability.
7.43 Deletion of identifying detail.
7.45 Access to materials and indices.
7.47 Index of public materials.
7.49 Copies.

Subpart F—Availability of Reasonably Described Records

7.51 Applicability.
7.53 Public availability of records.
7.55 Request for records of concern to more than one Government organization.
7.57 Request for business information submitted by a private party.

Subpart G—Exemptions

7.61 Applicability.
7.63 Records relating to matters that are required by Executive Order to be kept secret.
7.65 Records related solely to internal personnel rules and practices.

Sec.
7.67 Records exempted from disclosure by statute.
7.69 Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
7.71 Intragovernmental exchanges.
7.73 Protection of personal privacy.
7.75 Records or information compiled for law enforcement purposes.
7.77 Reports of financial institutions.
7.79 Geological and geophysical information.

Subpart H—Procedures for Appealing Decisions Not To Disclose Records And/Or Waive Fees

7.81 General.

Subpart I—Fees

7.91 General.
7.93 Payment of fees.
7.95 Fee schedule.
7.97 Services performed without charge or at a reduced charge.
7.99 Transcripts.
7.101 Copyrighted material.
7.103 Alternative sources of information.
APPENDIX A TO PART 7—OFFICE OF THE SECRETARY
APPENDIX B TO PART 7—UNITED STATES COAST GUARD
APPENDIX C TO PART 7—FEDERAL AVIATION ADMINISTRATION
APPENDIX D TO PART 7—FEDERAL HIGHWAY ADMINISTRATION
APPENDIX E TO PART 7—FEDERAL RAILROAD ADMINISTRATION
APPENDIX F TO PART 7—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
APPENDIX G TO PART 7—URBAN MASS TRANSPORTATION ADMINISTRATION
APPENDIX H TO PART 7—SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
APPENDIX I TO PART 7—MARITIME ADMINISTRATION
APPENDIX J TO PART 7—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

AUTHORITY: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322.

SOURCE: 53 FR 30268, Aug. 11, 1988, unless otherwise noted.

Subpart A—Applicability and Policy

§ 7.1 Applicability.

(a) This part implements section 552 of title 5, United States Code, and prescribes rules governing the availability to the public of records of the Department of Transportation.

(b) Subpart G of this part describes the records that are not required to be disclosed under this part.

(c) Appendices A through J of this part:

(1) Describe the places and the times at which records will be available for inspection and copying;

(2) Define the kinds of records located at each facility;

(3) Identify the location of the indices to such records; and

(4) Identify the officials having authority to deny requests for disclosure of records under this part.

(d) The Office of the General Counsel may amend appendix A to this part to reflect any changes in the items covered by that appendix. The head of an operating element concerned may amend the appendix applicable to that element to reflect any changes in the items covered by that appendix.

(e) This part applies only to records that exist as of the date of receipt of the request by the appropriate office, in accordance with § 7.53 of this part. The Department is not required to create, compile or procure a record solely for the purpose of making it available under this part.

(f) Indices are maintained to reflect all records subject to subpart E of this part, and are available for public inspection and copying as provided in Appendices A through J to this part.

[53 FR 30268, Aug. 11, 1988, as amended by Amdt. 7-1, 54 FR 10010, Mar. 9, 1989]

§ 7.3 Policy.

In implementing section 552 of title 5, United States Code, it is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of the Department, except those that the Department specifically determines must not be disclosed in the interest of national defense or foreign policy, for the protection of private rights and commercial interests or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying as provided in this part. Each officer and employee of the Department is directed to cooperate to this end and to make records available to the public promptly and to the fullest extent consistent with this policy. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass an officer or employee of the Department.

§ 7.5 Definitions.

As used herein, unless the context requires otherwise:

Administrator means the head of each operating element of the Department and includes the Commandant of the Coast Guard.

Department or *DOT* means the Department of Transportation, including the Office of the Secretary and the following operating elements:

(a) The United States Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The Saint Lawrence Seaway Development Corporation.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

Record includes any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer. However, the term does not include uncirculated personal notes, papers and other documents created and retained solely for the personal convenience of Departmental personnel and over which the agency exercises no control. If a request is made for a personal record of a DOT official or employee, that request is denied, since it is not within the Department's authority to disclose such records and the Freedom of Information Act does not apply to them. However, until the requester's appeal and litigation rights expire, DOT retains a copy of such records for the benefit of any reviewing court. This retention does not constitute control as that term is used here.

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—General

§ 7.11 Administration of part.

Except as provided in subpart H of this part, authority to administer this part in connection with the records of the Office of the Secretary (including the Office of the Inspector General) and to issue determinations with respect to initial requests for such records under this part is delegated to the Assistant Secretary for Public Affairs. Authority to administer this part in connection with records of each operating element is delegated to each Administrator, who may redelegate to officers of that element the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties under subpart H of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more then one other officer who reports directly to the Administrator and who is located at the headquarters of that operating element.

§ 7.13 Records containing both available and unavailable information.

If a record contains information that the Department determines cannot be disclosed, but also contains reasonably segregable information that may not be withheld, the latter information shall be made available.

§ 7.15 Protection of records.

(a) No person may, without permission, remove any record made available to him or her for inspection and copying under this part from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate or destroy, in whole or in part, such a record.

(b) Section 641 of title 18 of the United States Code provides, in pertinent part, for criminal penalties for embezzlement or theft of government records.

(c) Section 2071 of title 18 of the United States Code provides, in pertinent part, for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate or destroy, government records.

Subpart C—Time Limits

§ 7.21 Initial determination.

An initial determination whether to release a record requested pursuant to subpart F shall be made within ten working days after the request is received by the appropriate office in accordance with section 7.53, except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination. If the determination is to grant the request, the desired record shall be made available as promptly as possible. If the determination is to deny the request the person making the request shall be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination; the right of such person to appeal the determination; and the name and title of each person responsible for the initial determination to deny the request.

§ 7.23 Final determination.

A determination with respect to any appeal made pursuant to § 7.81 shall be made within twenty working days after receipt of such appeal except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination, pursuant to § 7.81 of this part.

§ 7.25 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in § 7.21 and § 7.23 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with any other agency or DOT operating element having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

Subpart D—Publication in Federal Register

§ 7.31 Applicability.

This subpart implements section 552(a)(1) of title 5, United States Code, and prescribes rules governing the publication in the FEDERAL REGISTER of the following:

(a) Descriptions of the organization of the Department, including its operating elements and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or requests or obtain decisions;

(b) Statements of the general course and methods by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applibability formulated and adopted by the Department; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.33 Publication required.

(a) *General.* The material described in § 7.31 shall be published in the Federal Register. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the Federal Register if it has been incorporated by reference therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of the terms thereof, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the Federal Register, but not so published.

Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations: Indices

§ 7.41 Applicability.

(a) This subpart implements section 552(a)(2) of title 5, United States Code. It prescribes the rules governing the availability, for public inspection and copying, of the following:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under the authority of the Department, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Departmental inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes. Indices of materials listed in this paragraph shall be maintained as specified in Appendices A–J of this part.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.45, may not be cited, relied on, or used as precedent by the Department to adversely affect any member of the public unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of that material.

(c) This subpart does not apply to material that is published in the Federal Register or is covered by subpart G of this part.

§ 7.43 Deletion of identifying detail.

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details shall be deleted from any record covered by subpart E of this part that is published or made available for inspection. A full explanation of the justification for the deletion shall accompany the record published or made available for inspection.

§ 7.45 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.41(a) shall be made available for inspection and copying by any member of the public at document inspection facilities of the Department. The index of materials available at each facility shall be published in the Federal Register quarterly and shall also be located at the facility. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating element of which it is a part.

(b) The material listed in § 7.41(a) that is published and offered for sale shall be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at any document inspection facility maintained by the Office of the Secretary or an operating element, whichever is concerned.

§ 7.47 Index of public materials.

The index of material subject to public inspection and copying under this subpart shall cover all material issued, adopted, or promulgated after July 4, 1967; however, earlier material may be included in the index to the extent practicable. Each index shall contain instructions on how to use it.

§ 7.49 Copies.

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the office indicated in § 7.53. Copies will be certified upon request and payment of the fee prescribed in § 7.95(f).

Subpart F—Availability of Reasonably Described Records

§ 7.51 Applicability.

This subpart implements section 552(a)(3) of title 5, United States Code, and prescribes the regulations governing public inspection and copying of reasonably described records.

§ 7.53 Public availability of records.

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent should be prominently marked: "FOIA."

(4) The request should be addressed to the appropriate office as set forth in paragraph (c) of this section.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The ten-day time limit described in § 7.21 shall not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as a request pursuant to the Freedom of Information Act and has been received by the office to which it should have been originally sent.

(c) Each person desiring access to or a copy of a record covered by this subpart that is located in the Office of the Secretary shall make a written request to the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Each person desiring access to or a copy of a record covered by this subpart that is located in an operating element shall make a written request to that element at the address set forth in the applicable appendix to this part. It the person making the request does not know where in the Department the record is located, he or she may make inquiry of the Assistant Secretary for Public Affairs as to its location.

(d) Each request should describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and, if known, indicate the date when it was made, the place where it was made, and the person or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office shall notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this subpart shall be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requester upon payment of the appropriate fee. Original records ordinarily will be copied except in those instances where, in the Department's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from custody.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requester shall be so notified.

(g) Fees will be determined in accordance with subpart I and the applicable appendix or appendices to this part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets and other materials of that nature that are ordinarily made available to the public as a part of any information program of the Government will be available upon oral or written request. There will be no fee for individual copies of that material so long as they are in supply. In addition, the Department will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

§ 7.55 Request for records of concern to more than one Government organization.

(a) If the release of a record covered by this subpart would be of concern to both this Department and another Federal agency, the determination as to release will be made only after consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both this Department and a State or local government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by the Department only after consultation with the other interested State or local government or foreign government.

(c) Whenever a request is made for: (1) A record containing information that has been classified by another Federal agency or that may be eligible for classification by such an agency; or (2) a record containing information that relates to an investigation of a possible violation of criminal law or to a law enforcement proceeding and that was generated or originated by another Federal agency, the Office of the Secretary or the responsible operating element, whichever the case be, shall refer the request, or the portion thereof that pertains to the record in question, to the originating agency for a releasability determination. The requester shall be notified of the referral and informed of the name and address of the agency to which the request, or portion thereof, has been referred, unless such notification might jeopardize a law enforcement proceeding or have an adverse effect on national security matters.

§ 7.57 Request for business information submitted by a private party.

(a) If a request is received for information which has been designated by the submitted as confidential commercial information, or which the Department has some other reason to believe may contain trade secrets or other commercial or finanical information of the type described in § 7.69 of subpart G, the submitter of such information shall, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requester shall be notified that notice and an opportunity to comment are being provided to the submitter. The submitter shall, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The Office of the Secretary or the responsible operating element, whichever the case may be, shall, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision is made to disclose the business information over the objection of a submitter, the office responsible for the decision shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not substained;

(2) A description of the business information to be disclosed; and

(3) A specific disclosures date.

Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requester shall be notified of the decision to disclose information.

(c) The notice requirements of this section shall not apply if:

(1) The office responsible for the decision determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section shall not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice (14 CFR 302.39), and in Aviation Economic Proceedings.

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Office of the Secretary or the responsible operating element, whichever the case may be, shall promptly notify the submitter.

Subpart G—Exemptions

§ 7.61 Applicability.

This subpart implements section 552(b) of title 5, United States Code, which exempts certain records from the public disclosure requirements of section 552(a). The Department will, however, release a record authorized to be withheld under §§ 7.65 through 7.79 unless it determines that the release of that record would be inconsistent with a purpose of the section concerned. Examples given in §§ 7.63 through 7.79 of records included within a particular statutory exemption are only illustrative and do not define all types of records covered by the exemption.

§ 7.63 Records relating to matters that are required by Executive Order to be kept secret.

Records relating to matters that are specifically authorized to be kept secret in the interest of national defense or foreign policy shall be exempt from public disclosure. Records exempt under this provision include but are not limited to those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive Order. These records shall not be made available for public inspection.

(a) Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166);

(b) Executive Order 12065 of June 28, 1978, as as amended, (3 CFR, 1978 Comp., p. 190);

(c) Executive Order 11652 of March 8, 1972 (3 CFR, 1971-1975 Comp., p. 678);

(d) Executive Order 10865 of February 20, 1960 (3 CFR, 1959-1963 Comp., p. 398);

(e) Executive Order 10501 of November 5, 1953 (3 CFR, 1949-1953 Comp., p. 979); and

(f) Executive Order 10104 of February 1, 1950 (3 CFR, 1949-1953 Comp., p. 298).

§ 7.65 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals involving labor-management relationships. Also included within the statutory exemption are staff manuals or instructions concerning predominantly internal operating rules, practices, guidelines, procedures, and administrative data and handling instructions for Departmental personnel such as inspectors, investigators, examiners, auditors, and negotiators.

(b) The purpose of this section is to authorize the protection of those records in which there is slight public interest or which, if released, would substantially impair the performance of duties of Departmental employees or significantly risk circumvention of agency regulations or statutes.

§ 7.67 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted from disclosure by statute (other than section 552(b) of title 5, United States Code) include, but are not limited to, those covered by the following:

(1) Section 3771 of title 18, United States Code, in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure, protecting grand jury material.

(2) Section 106 of the Highway Safety Act of 1966 (Pub. L. 89-564, 80 Stat. 731), protecting information identifying individuals who are the subject of highway traffic accident investigations.

(3) Section 206(c)(1) of the National Driver Register Act of 1982 (23 U.S.C. 401 (note)) and the National Driver Register Act, Pub. L. 86-660, as amended (23 U.S.C. 313 (note)), protecting information concerning individuals included in reports of State driver licensing officials to the Department.

(4) Section 3315(b) of title 46, United States Code, protecting the source of reports of defects and imperfections of vessels.

(5) Section 7319 of title 46, United States Code, protecting the names, addresses, and next of kin of merchant seamen and entries made in records pertaining to merchant seamen.

(6) Section 10311(d) of title 46, United States Code, protecting records of the discharge of merchant seamen.

(7) Section 1173(c)(1)(D)(3) of title 46, United States Code, protecting wage and benefit cost data for employees covered by collective-bargaining agreements for vessels receiving operating-differential subsidy payments.

(8) Section 1173(d) of title 46, United States Code, protecting certain foreign wage cost computations associated with the operation of foreign vessels.

(9) Section 6102 of title 46, United States Code, protecting information derived from boating safety accident reports compiled by a State.

(10) Section 316(d)(2) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1357(d)(2)), protecting information obtained or generated in the conduct of research and development of systems and procedures to protect persons and property aboard aircraft.

(11) Section 902(f) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(f)), relating to information obtained by examining the accounts, records, or memoranda of an air carrier.

(12) Section 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1481), so far as it relates to the secrecy of acts and proceedings when requested on grounds of national defense.

(13) Section 1104 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1504), protecting information, which, if disclosed, would prejudice the formulation and presentation of positions of the United States in international aviation negotiations or adversely affect the competitive position of any United States air carrier in foreign air transportation.

§ 7.69 Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(a) Trade secrets and commercial or financial information obtained from a person and privileged or confidential are within this statutory exemption. This includes:

(1) Commercial or financial information which, if disclosed, is likely to cause substantial harm to the competi

tive position of the submitter of the requested information;

(2) Commercial or financial information which if disclosed, is likely to impair the Government's ability to obtain necessary information in the future through purely voluntary cooperation;

(3) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege; or

(4) Information that constitutes a trade secret.

(5) Commercial or financial information which, if disclosed, would impair any other identifiable government interest or hinder agency officials in carrying out their mandate.

(b) The purpose of this section is to exempt from mandatory disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential. This section assures the confidentiality of trade secrets and commercial or financial information obtained by the Department through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Department has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Department's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and architectural drawings, have significance as items of property acquired, in many cases, at public expense. Such material may be treated as exempt from mandatory disclosure in any case in which similar proprietary material in private hands would be held in confidence. To the extent feasible, any person submitting information to the Department which may qualify for this exemption should request that the information not be disclosed.

§ 7.71 Intragovernmental exchanges.

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant or advisory body) for internal Government use is within the statutory exemption to the extent it contains:

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action.

(2) Confidential communications between a Government attorney or an attorney acting on behalf of the Government and his or her client relating to a legal matter for which the client has sought professional advice.

(3) Information prepared by a Government attorney or an attorney acting on behalf of the Government in anticipation of litigation.

(4) Confidential commercial information generated by the Government where disclosure of such information would prejudice the Government's bargaining position in commercial transactions.

Examples of records covered by this section include staff memoranda containing advice, opinions, recommendations, suggestions, or exchanges of views, preliminary to final agency decision or action, with the exception of factual information, unless such information is inextricably intertwined with deliberative material; draft documents such as draft versions of audit reports prepared by the Office of Inspector General; appraisals of property to be condemned by the Government; legal opinions and/or advice rendered by a Government attorney or an attorney acting on behalf of the Government and based on information communicated in confidence by the client; memoranda and other documents prepared by a Government attorney or an attorney acting on behalf of the Government setting forth strategy with regard to pending or probable future litigation and not otherwise made a matter of public record in a particular legal proceeding; and material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly decisionmaking by the Department.

(b) The purpose of this section is to protect internal records that are not routinely available by law to another party in litigation with the Government.

§ 7.73 Protection of personal privacy.

(a) Any of the following personnel, medical or similar records are within the statutory exemption if disclosure would result in a clearly unwarranted invasion of personal privacy:

(1) Personnel and background records personal to any officer or employee of the Department, or other person, including his or her residential address.

(2) Medical histories and medical records concerning individuals, including applicants for licenses.

(3) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's right to Department information by authorizing the protection of intimate details of a personal nature which, if released, might unjustifiably invade an individual's privacy.

§ 7.75 Records or information compiled for law enforcement purposes.

(a) Files compiled for law enforcement purposes by the Department or any other Federal, State, or local agency, including those files compiled for the enforcement of regulations, are within the statutory exemption to the extent that production of such records or information could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source and, in the case of a record compiled for a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to endanger the life or physical safety of any individual.

(b) The purpose of this section is to protect law enforcement files from premature disclosure, including files prepared in connection with related judicial or administrative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws and regulations.

§ 7.77 Reports of financial institutions.

Any material contained in or related to any examination, operating, or condition report prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

§ 7.79 Geological and geophysical information.

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.

Subpart H—Procedures for Appealing Decisions Not To Disclose Records and/or Waive Fees

§ 7.81 General.

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, shall give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within the Department.

(b) When a request for waiver of fees, pursuant to § 7.97(c) of this part, has been denied in whole or in part, the requester may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by subpart C and any person who has been given a determination pursuant to paragraph (a) of this section that a record he or she requested will not be disclosed may appeal to the head of the operating element concerned or, in the case of the Office of the Secretary, to the General Counsel of the Department. Any person who has not received an initial determination on his or her request within the time limits established by subpart C can seek immediate judicial review. Judicial review may be sought without the need to submit first an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purpose of judicial review unless:

(1) It was made by the head of the operating element concerned (or his or her designee), or the General Counsel, as the case may be; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include all information and arguments relied upon by the person making the request. Such letter should indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in § 7.23 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by an employee of the Department as an appeal under the Freedom of Information Act and has been received, or should have been received, by the appropriate office.

(e) Whenever the head of the operating element concerned, or the General Counsel, as the case may be, determines it to be necessary, he or she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the head of the operating element concerned, or the General Counsel, as the case may be, as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the head of the operating element concerned, or the General Counsel, as the case may be, not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of section 552(a)(4)(B) of title 5, United States Code.

(g) Any final determination by the head of an operating element or his or her delegee identified in Appendices B through J of this part, not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by the General Counsel or his or her designee.

(h) Upon a determination that an appeal will be denied, the requester shall be informed in writing of the reasons for the denial of the request, and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

Subpart I—Fees

§ 7.91 General.

(a) This subpart prescribes fees for services performed for the public under subparts E and F of this part by the Department.

(b) All terms defined by the Freedom of Information Act apply to this subpart, and the term "hourly rate" means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40 hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of the Department, including those of non-appropriated fund activities of the United States Coast Guard and the Maritime Administration.

(d) This subpart does not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by the Department in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

(e) This subpart does not apply to requests from record subjects for records about themselves filed in Departmental systems of records. Fees for such requests are to be determined in accordance with the Privacy Act of 1974, as implemented by Department of Transportation regulations (49 CFR part 10).

§ 7.93 Payment of fees.

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the Treasury of the United States. However, in the case of the Saint Lawrence Seaway Development Corporation, all fees resulting from a request to that operating element shall be made payable to the Saint Lawrence Seaway Development Corporation.

(b) Charges may be assessed by the Department for time spent searching for requested records even if the search fails to locate the records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, the Department may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When it is estimated that the search charges, review charges, duplication fees or any combination of fees that could be charged to the requester will likely exceed $25, the requester shall be notified of the estimated amount of the fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. The notice shall also inform the requester how to consult with appropriate Departmental officials with the object of reformulating the request to meet his or her needs at a lower cost.

(d) Payment of fees may be required by the Department prior to actual duplication of delivery of any releasable records to a requester. However, advance payment of fees, i.e., payment before work is commenced or continued on a request, may not be required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed $250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous FOIA request.

(e) When paragraph (d)(1) of this section applies, the requester shall be notified of the likely cost and, where he or she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment. Where no history of payment exists, the requester may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requester shall be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges and penalty charges as discussed below. The requester shall also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) The Department will assess interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest will accrue from the date of the notice of amount due and will be at the rate prescribed in section 3717 of title 31. U.S.C. Receipt by the Department of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing will stay the accrual of interest, even if the payment has not been processed.

(h) If payment of fees charged is not received within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, an administrative charge will be assessed by the Department to cover the cost of processing and handling the delinquent claim. In addition, a penalty charge will be applied with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, other steps permitted by federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, will be utilized by the Department to encourage payment of amounts overdue.

(i) In any instance where the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break down a single FOIA request into a series of requests for the sole purpose of evading the payment of otherwise applicable fees, the Department will aggregate the requests and determine the applicable fees on the basis of the aggregation.

(j) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under subpart F, after taking into account all services which must be provided at no charge or at a reduced charge, is less than $10.00 the Department will not make any charge for fees.

§ 7.95 Fee schedule.

(a) The standard fee for a manual search to locate a record requested under subpart F of this part, including making it available for inspection, will be determined by multiplying each searcher's hourly rate plus 16 percent by the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under subpart F of this part is the actual cost. This includes the cost of operating the central processing unit (CPU) for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer salary (hourly rate plus 16 percent) costs apportionable to the search.

(c) The standard fee for review of records requested under subpart F of this part is the reviewer's hourly rate plus 16 percent multiplied by the time he or she spent determining whether the requested records are exempt from mandatory disclosure.

(d) The standard fee for duplication of a record requested under subpart F of this part is determined as follows:

(1) Per copy of each page (not larger than 8½×14 inches) reproduced by photocopy or similar methods (includes costs of personnel and equipment), $0.10.

(2) Per copy prepared by computer, such as tapes or printout, Actual costs, including operator time.

(3) Per copy prepared by any other method of duplication, Actual direct cost of production.

(e) Depending upon the category of requester, and the use for which the records are requested, in some cases the fees computed in accordance with the above standard fee schedule must either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by the FOIA may be made available upon request, at the stated fees:

Certified copies of documents, with Department of Transportation or operating element seal (where authorized), $4.00, or true copy, without seal, $2.00.

§ 7.97 Services performed without charge or at a reduced charge.

(a) No fee is to be charged to any requester making a request under subpart F for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 per cent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) No fee is to be charged for any time spent searching for a record requested under subpart F if the records are not for commercial use and the requester is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) No fee is to be charged for duplication of the first 100 pages (standard paper, not larger than 8½×14 inches) of records provided to any requester in response to a request under subpart F unless the records are requested for commercial use.

(d) No fee is to be charged to any requester for review of a record requested under subpart F to determine whether it is exempt from disclosure unless the records are requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the Assistant Secretary for Public Affairs, or his or her designee, or official(s) having initial denial authority, as the case may be, determine that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(f) Factors to be considered by officials of the Department authorized to determined whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requester.

§ 7.99 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits the Department to handle the reproduction of further copies, subpart I applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§ 7.101 Copyrighted material.

Unless approval is secured from the copyright holder, the Department will not reproduce or otherwise disseminate a copy of a copyrighted work to a requester under the FOIA. However, the Department will make arrangements to enable a requester to review the copyrighted work at a Departmental facility.

§ 7.103 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources shall be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; the U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or the National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743-3701.

APPENDIX A TO PART 7—OFFICE OF THE SECRETARY

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Office of the Secretary (OST); the kinds of records that are available for public inspection and copying at the facility; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facilities.* The document inspection facility for records of the Office of the Secretary other than those required to be filed in connection with docketed aviation economic matters is maintained by the Office of the General Counsel, Suite 9421 of the Headquarters Building, located at 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings. The document inspection facility for documents required to be filed in connection with docketed aviation economic matters is maintained by the Documentary Services Division, Office of the General Counsel, Suite 4107 of the Headquarters Building. This facility is open to the public from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except legal public holidays and other special closings.

3. *Records available through the document inspection facilities.* The following records are available through the document inspection facilities:

(a) Any material issued by the Office of the Secretary and published in the FEDERAL REGISTER, including regulations.

(b) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(c) Any policy or interpretation issued by the Office of the Secretary, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by the Office of the Secretary, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Formal pleadings filed in connection with docketed aviation economic proceedings, including applications, complaints, motions, petitions, answers, comments and replies.

(f) *DOT Orders.* DOT orders that are issued by the Department and used primarily to promulgate internal DOT policy, instructions, and general guidance.

(g) *DOT Notices.* DOT notices that are issued by the Department and contain short-term instructions or information that is scheduled to remain in effect for fewer than 90 days or for a predetermined period of time normally not to exceed one year.

(h) *OST Orders.* OST orders that are issued by the Office of the Secretary (OST) and used primarily to promulgate internal OST policy, instructions, and general guidance.

(i) *OST Notices.* OST notices that are issued by the Office of the Secretary and contain short-term instructions or information which is expected to remain in effect for fewer than 90 days or for a predetermined period of time normally not to excees one year.

4. *Requests for records under subpart F of this part.* Each person desiring to inspect an OST record, or to obtain a copy thereof, should submit a written request to the Associate General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW.,

Washington, DC 20590. If it is unknown where in DOT the record(s) sought may be found, the request may be submitted to the Associate General Counsel, who will ensure the appropriate processing.

5. *The official having authority to make determinations on requests*, pursuant to the Freedom of Information Act, is limited to the Associate General Counsel or his or her designee.

6. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the General Counsel, U.S. Department of Transportation, for reconsideration of that determination. The decision of the General Counsel is administratively final.

[53 FR 30268, Aug. 11, 1988, as amended by Amdt. 7-1, 54 FR 10010, Mar. 9, 1989]

APPENDIX B TO PART 7—UNITED STATES COAST GUARD

1. General.

This appendix describes the document inspection facilities of the U.S. Coast Guard, the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

The document inspection facilities are located at the offices of the Commandant and District Commanders. The address for each of these facilities is set forth below. They are open to the public Monday through Friday during the hours specified, except for legal public holidays and other special closings. The States or regions within the jurisdiction of each District are also provided.

Commandant (G-TIS), U.S. Coast Guard, Washington, DC 20593. The facility is located at Coast Guard Headquarters, Management Analysis Division, 2100 Second Street SW., Washington, DC 20593. 7:00 a.m.-3:30 p.m. ET.

Commander, First Coast Guard District, Coast Guard Building, 408 Atlantic Building, Boston, MA 02210. 8:00 a.m.-4:30 p.m. ET. (Maine, Massachusetts, Connecticut, New Hampshire, Rhode Island, Vermont, New Jersey (northeastern), and New York (eastern).

Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103. 8:45 a.m.-5:15 p.m. CT. (Alabama (northern), Arkansas, Colorado, Illinois (parts), Indiana (parts), Iowa, Kansas, Kentucky, Minnesota (parts), Mississippi (northern), Missouri, Nebraska, North Dakota, Ohio (parts), Oklahoma, Pennsylvania (western), South Dakota, Tennessee, West Virginia, Wisconsin (western), and Wyoming)

Commander, Fifth Coast Guard District, Federal Office Building, 431 Crawford Street, Portsmouth, Virginia 23705. 8:00 a.m.-4:30 p.m. ET. (Maryland, North Carolina, Virginia, New Jersey (southwestern), Delaware, Pennsylvania (eastern), and the District of Columbia.

Commander, Seventh Coast Guard District, Federal Building, Room 1018, 51 SW. First Avenue, Miami, FL 33130. 8:00 a.m.-4:30 p.m. ET. (Florida (parts), Georgia (parts), South Carolina, and Puerto Rico)

Commander, Eighth Coast Guard District, 500 Camp Street, New Orleans, LA 70130. 7:45 a.m.-4:15 p.m. CT. (Alabama (parts), Florida (northeastern), Georgia (southeastern), Louisiana, Mississippi (parts), New Mexico, and Texas)

Commander, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. 7:30 a.m.-4:00 p.m. ET. (Illinois (northeastern), Indiana (northern), Michigan, Minnesota (northern), New York (northwestern), Ohio (northern), Pennsylvania (northeastern), Wisconsin (eastern))

Commander, Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90882. 8:00 a.m.-4:30 p.m. PT. (Arizona, California, Nevada, and Utah)

Commander, Thirteenth Coast Guard District, Federal Building, Room 3590, 915 Second Avenue, Seattle, WA 98174. 7:45 a.m.-4:15 p.m. PT. (Idaho, Montana, Oregon, and Washington)

Commander, Fourteenth Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI 96850. 6:30 a.m.-3:00 p.m. Hawaii-Aleutian Standard Time. (Hawaii)

Commander, Seventeenth Coast Guard District, Federal Building, 709 West 9th Street, Post Office Box 3-5000, Juneau, AK 99802. 8:00 a.m.-4:00 p.m. Alaska Time. (Alaska)

3. Records Available at Document Inspection Facilities

(a) The following records are available at any U.S. Coast Guard document inspection facility:

(1) Final opinions and orders made in the adjudication of cases by the Commandant, U.S. Coast Guard.

(2) U.S. Coast Guard numbered publications that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(b) Opinions and orders of administrative law judges are available at the document inspection facility of the Office of the Commandant and the district in which the administrative law judge is located.

(c) Policies and interpretations issued within the U.S. Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation) are available at the document inspection facility of the Office of the Commandant.

(d) An index of the records located at each facility is maintained at that facility.

(e) The records and the index may be inspected at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

4. Requests for Records Under subpart F of this part

Each person desiring to inspect a record, or obtain a copy thereof, should submit the request in writing to the U.S. Coast Guard office at which such record is located. The addresses of the Commandant and District Commanders are listed in section 2 of this appendix. If the office at which the record is located is unknown, the request may be submitted to the Office of the Commandant at the address listed in section 2 of this appendix. The following gives illustrations of types of records and specifies where requests for such records are appropriately addressed:

(a) Examples of records for which requests may properly be made to either the Office of the Commandant, U.S. Coast Guard or office of the appropriate District Commander include the following:

(1) Marine Casualty investigative records.

(2) Records of certificates and licenses issued.

(3) Merchant vessel inspection records.

(4) Records of merchant vessel documentation and recording of sales and other dispositions.

(5) Records of U.S. Coast Guard property and contracts.

(b) Examples of records for which requests may properly be made only to the Office of the Commandant, U.S. Coast Guard, include the following:

(1) Central files of merchant seamen.

(2) Merchant vessel shipping articles.

(3) Merchant vessel equipment approvals.

(4) Merchant Marine Council proceedings.

(5) Great Lakes pilotage records.

(6) Central files of U.S. Coast Guard personnel.

(7) U.S. Coast Guard courts-martial records.

(8) U.S. Coast Guard vessel and shore station log books more than one year old on January 1 of the year in which the request is made.

(c) Examples of records for which requests may properly be made only to the appropriate District Commander include the following:

(1) Navigation and vessel inspection penalty action records.

(2) Search and rescue reports.

(3) Coast Guard vessel and shore station log books for the current calendar year and the calendar year immediately preceding the current year.

(4) Port safety and waterfront facility records.

(5) Aids to navigation records.

(6) Merchant vessel logbooks.

(7) Shipyard and factory inspection records.

5. Officials Having Initial Authority to Deny Requests.

The following officials have authority to make initial determinations to deny requests for records:

(a) Field commanders.

(1) Commander, Atlantic Area.

(2) Commander, Pacific Area.

(3) Commander, First Coast Guard District.

(4) Commander, Second Coast Guard District.

(5) Commander, Fifth Coast Guard District.

(6) Commander, Seventh Coast Guard District.

(7) Commander, Eighth Coast Guard District.

(8) Commander, Ninth Coast Guard District.

(9) Commander, Eleventh Coast Guard District.

(10) Commander, Thirteenth Coast Guard District.

(11) Commander, Fourteenth Coast Guard District.

(12) Commander, Seventeenth Coast Guard District.

(13) Commander, Maintenance and Logistics Command Atlantic.

(14) Commander, Maintenance and Logistics Command Pacific.

(15) Superintendent, U.S. Coast Guard Academy.

(16) Commanding Officer, Coast Guard Yard.

(17) Commanding Officer, Coast Guard Training Center Cape May.

(18) Commanding Officer, Coast Guard Reserve Training Center.

(19) Commanding Officer, Coast Guard Pay and Personnel Center.

(b) Headquarters officials concerning records within their office.

(1) Chief, Plans and Evaluation Division (for records located within the office of the Commandant, Chief of Staff, special staff divisions or when a request involves records located in two or more offices).

(2) Chief, Office of Acquisition.

(3) Chief, Office of Boating, Public and Consumer Affairs.

(4) Chief, Office of Comptroller.

(5) Chief, Office of Civil Rights.

(6) Chief, Office of Health Services.

(7) Chief, General Law Division (for records in the office of the Chief Counsel).

(8) Chief, Office of Marine Safety, Security and Environmental Protection.

(9) Chief, Office of Navigation.

(10) Chief, Office of Operations.

(11) Chief, Office of Personnel.

(12) Chief, Office of Readiness and Reserve.

(13) Chief, Office of Command, Control and Communications.

6. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers.

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for the waiver or reduction of a processing fee has been denied, may apply, in writing, to the Commandant (G-TIS), U.S. Coast Guard, for reconsideration of that determination. The decision of the Commandant or his or her designee is administratively final.

APPENDIX C TO PART 7—FEDERAL AVIATION ADMINISTRATION

1. General

This appendix describes the document inspection facilities of the Federal Aviation Administration (FAA), the kinds of records that are available for public inspection and copying at those facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

Document inspection facilities are maintained at FAA Headquarters, each FAA regional office, the Aeronautical Center, and the FAA Technical Center. The document inspection facility for the European Office is located at FAA Headquarters. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, during local times specified in the following listings. The States within the jurisdictional area of each FAA Regional Office are also listed in parentheses.

FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591. 8:30 a.m.-5:00 p.m. ET.
Alaska Region, 701 C Street, Box 14, Anchorage, AK 99513. 7:30 a.m.-4:00 p.m. Alaska Time (Alaska)
Central Region, 601 East 12th Street, Kansas City, Missouri 64106. 7:30 a.m.-4:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)
Eastern Region, Fitzgerald Federal Bldg., JFK International Airport, Jamaica, NY 11430. 8:00 a.m-4:30 p.m. ET. (District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and West Virginia)
Great Lakes Region, O'Hare Lake Office Center, 2300 East Devon Street, Des Plaines, Ill. 60018. 7:30-4:00 p.m. CT. (Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin)
New England Region, 12 New England Executive Park, Burlington, MA (Mailing Address: Post Office Box 510, Burlington, MA 01803). 8:00 a.m.-4:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle WA 96168. 7:30 a.m.-4:00 p.m. PT. (Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming)
Southern Region, 3400 Norman Berry Drive, East Point, GA (Mailing Address: Post Office Box 20636, Atlanta, GA 30320). 8:00 a.m.-4:30 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and Virgin Islands.
Southwest Region, 4400 Blue Mound Road, Fort Worth, TX (Mailing Address: Fort Worth, TX 76193-0041). 8:00 a.m.-4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)
Western Pacific Region, 15000 Aviation Boulevard, Hawthorne, CA (Mailing Address: Post Office Box 92007, World-Way Postal Center, Los Angeles, CA 90009). 7:30 a.m.-4:00 p.m. PT. (Arizona, California, Hawaii, and Nevada)
Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard (Mailing Address: Post Office Box 25082), Oklahoma City, OK 73125. 8:00 a.m.-4:30 p.m. CT.
FAA Technical Center, Atlantic City Airport, Atlantic City, NJ 08405. 8:00 a.m.-4:30 p.m. ET.

3. Records Available at Document Inspection Facilities

(a) The following records under Subpart E of this part are available at FAA document inspection facilities:

(1) Final opinions and orders made in the adjudication of cases by the Administrator, FAA, or his/her designee.

(2) Policies and interpretations, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. All such policies and interpretations made by the Administrator, Deputy Administrator, Associate Administrators, directors, and heads of offices are available at the FAA Headquarters document inspection facility; only those policies and interpretations made by the Administrator, Deputy Administrator, and the regional or center director concerned are available at regional and center document inspection facilities.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. Such documents are available at the inspection facility of the organizational unit which has issued them.

(b) An index of the records located at each document inspection facility is maintained at that facility.

(c) The records and the index may be inspected, without charge, at the facility. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

4. Requests for Reasonably Described Records Under Subpart F of this part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Assistant Administrator for Public Affairs, FAA Headquarters, or the director of the region or center in which it is located. The addresses of FAA Headquarters and the Regions and Centers are listed in paragraph 2 of this Appendix. If the location of the record is not known, the request may be submitted to the Assistant Administrator for Public Affairs, FAA Headquarters. The following list gives illustrations of types of records and where they might be located:

(a) Records pertaining to the issue, amendment, suspension or revocation of certificates, permits, authorizations, and approvals, such as:

(1) Airman certificates and ratings for pilots, flight instructors, flight navigators, flight engineers, aircraft dispatchers, mechanics, repairmen, air traffic control operators, and parachute riggers and ground instructor certificates are maintained at the Mike Monroney Aeronautical Center.

(2) Aircraft registration certificates and airworthiness certificates are maintained at the Aeronautical Center.

(3) Aircraft type certificates and production certificates are maintained at the regional office within which the issuance was made.

(4) Ferry permits and special flight authorizations are maintained at the district office of the region within which the issuance was made.

(5) Air carrier operating certificates, commercial operator certificates, agricultural aircraft operator certificates, repair station certificates, parachute loft certificates, pilot school certificates, and mechanic school certificates are maintained at the district office of the region within which the certification was taken.

(b) Records of designations of representatives of the Administrator are located at FAA Headquarters.

(c) Records relating to Federal-aid airport grants are located at the regional office within which the grant was made.

(d) Records of approvals of navigational facilities under Federal Aviation Regulations (FAR) part 171 are located at the regional office within which the approval was issued.

(e) Records relating to civil penalty actions and seizure of aircraft are located at the regional office within which the action was taken.

5. Reconsideration of Determinations Not to Disclose Records and to Deny Fee Waivers

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing to the Assistant Administrator for Public Affairs, FAA, for reconsideration of that determination. The decision of the Assistant Administrator for Public Affairs is administratively final.

APPENDIX D TO PART 7—FEDERAL HIGHWAY ADMINISTRATION

1. General

This appendix describes the location and hours of operation of the document inspection facilities of the Federal Highway Administration (FHWA); the kinds of records that are available for public inspection and copying at these facilities; and the procedures by which members of the public may make requests for records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the Federal Highway Administration Headquarters, each regional office, and each division office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, during regular working hours, which are included parenthetically after each address below. Written requests for information should be sent to the appropriate office and the envelope in which the request is sent should be prominently marked with the letters "FOIA."

WASHINGTON HEADQUARTERS

FOIA Program Officer (HMS-10), Federal Highway Administration, 400 Seventh Street, SW., Room 4428, Washington, DC 20590. 7:45 a.m.-4:15 p.m. ET.

REGIONAL OFFICES

Regional Federal Highway Administrator, Region 1, Federal Highway Administration, Clinton Avenue and North Pearl Street, Room 719, Albany, NY 12207. 7:30 a.m.-4:00 p.m. ET. (New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Puerto Rico, Virgin Islands)

Regional Federal Highway Administrator, Region 3, Federal Highway Administration, 31 Hopkins Plaza, Room 1633, Baltimore, MD 21201. 7:45 a.m.-4:15 p.m. ET. (Maryland, Virginia, Delaware, District of Columbia, Pennsylvania, West Virginia)

Regional Federal Highway Administrator, Region 4, Federal Highway Administration, 1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367. 7:45 a.m.-4:15 p.m. ET. (Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, North Carolina, South Carolina)

Regional Federal Highway Administrator, Region 5, Federal Highway Administration, 18209 Dixie Highway, Homewood, IL 60430-2294. 7:30 a.m.-4:15 p.m. CT. (Illinois, Indiana, Ohio, Michigan Wisconsin, Minnesota)

Regional Federal Highway Administrator, Region 6, Federal Highway Administration, 819 Taylor Street, Fort Worth, TX 76102. 8:00 a.m.-4:30 p.m. CT. (Texas, Louisiana, Arkansas, Oklahoma, New Mexico)

Regional Federal Highway Administrator, Region 7, Federal Highway Administration, 6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141. 7:45 a.m.-4:15 p.m. CT. (Missouri, Iowa, Kansas, Nebraska)

Regional Federal Highway Administrator, R[illegible] 8, Federal Highway Administrat[illegible] 5 Zang Street, Room 400, Lakew[illegible] O 80228. 7:45 a.m.-4:15 p.m. MT. ([illegible]do, Utah, Wyoming, Montana, North Dakota, South Dakota)

Regional Federal Highway Administrator, Region 9, Federal Highway Administration, 211 Main Street, Room 1100, San Francisco, CA 94105. 7:45 a.m.-4:15 p.m. PT. (California, Arizona, Nevada, Hawaii, American Samoa, Guam)

Regional Federal Highway Administrator, Region 10, Federal Highway Administration, Mohawk Building, Room 312, 708 SW Third Avenue, Portland, OR 97204. 7:00 a.m.-5:00 p.m. PT. (Oregon, Idaho, Washington, Alaska)

Division Offices

Alabama, 441 High Street, Montgomery, AL 36104-4684. 7:45 a.m.-4:30 p.m. CT.

Alaska, Federal Building, 709 West Ninth Street, Room 851, P.O. Box 21648, Juneau, AK 99802-1648. 7:30 a.m.-5:00 p.m. Alaska Time.

Arizona, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004. 7:30 a.m.-4:15 p.m. MT.

Arkansas, Room 3128, Federal Office Building, 700 West Capitol Avenue, Little Rock, AR 72201-3298. 7:45 a.m.-4:15 p.m. CT.

California, Federal Building, Second Floor, 801 I Street, Sacramento, CA 95814. 7:45 a.m.-4:30 p.m. PT.

Colorado, 555 Zang Street, Room 250, Lakewood, CO 80228. 7:45 a.m.-4:15 p.m. MT.

Connecticut, Abraham A. Ribicoff Federal Building, 450 Main Street, Room 635, Hartford, CT 06103. 7:30 a.m.-4:00 p.m. ET.

Delaware, Federal Office Building, Room 2101, 300 South New Street, Dover, DE 19901-6726. 7:45 a.m.-4:15 p.m. ET.

District of Columbia, Nassif Building, Room 6320, 400 Seventh Street, SW., Washington, DC 20590. 7:30 a.m.-4:00 p.m. ET.

Florida, 227 North Bronough Street, Room 2015, Tallahassee, FL 32301. 7:30 a.m.-4:00 p.m. ET.

Georgia, Suite 300, 1720 Peachtree Road, NW., Atlanta, GA 30367. 7:00 a.m.-4:00 p.m. ET.

Hawaii, Prince Jonah Kuhio Kalanianaole Federal Building, 300 Ala Moana Boulevard, Room 3202, Honolulu, HI 96850. (Duty Hours) 7:30 a.m.-4:00 p.m. HST.

Idaho, 3010 W. State Street, Boise, ID 83703. 7:30 a.m.-4:30 p.m. MT.

Illinois, 320 West Washington Street, Room 700, Springfield, IL 62701. 7:30 a.m.-4:15 p.m. CT.

Indiana, 575 N. Pennsylvania Street, Room 254, Indianapolis, IN 46204. 7:30 a.m.-4:00 p.m. Eastern Standard Time.

Iowa, 105 Sixth Street, Ames, IA 50010. 7:45 a.m.-4:30 p.m. CT. Mailing address: P.O. Box 627.

Kansas, 444 SE Quincy Street, Room 240, Topeka, KA 66683. 7:45 a.m.-4:15 p.m. CT.

Kentucky, John C. Watts Federal Building and U.S. Courthouse, 330 West Broadway, Frankfort, KY 40602. 8:00 a.m.-4:45 p.m. ET. Mailing address: P.O. Box 536.

Louisiana, Federal Building, Room 239, 750 Florida Street, Baton Rouge, LA 70801. 7:30 a.m.-4:00 p.m. CT. Mailing address: P.O. Box 3929, Baton Rouge, LA 70821.

Maine, Edmund S. Muskie Federal Building, U.S. Post Office, Room 614, 40 Western Avenue, Augusta, ME 04330. 7:30 a.m.-4:00 p.m. ET.

Maryland, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211 7:45 a.m.-4:15 p.m. ET.

Massachusetts, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142. 7:45 a.m.-4:15 p.m. ET.

Michigan, Federal Building, 315 West Allegan Street, P.O. Box 10147, Room 211, Lansing, MI 48901. 8:00 a.m.-4:45 p.m. ET.

Minnesota, Metro Square Building, Suite 490, Seventh & Robert Streets, St. Paul, MN 55101. 7:30 a.m.-4:00 p.m. CT.

Mississippi, 666 North Street, Suite 105, Jackson, MS 39202-3199. 7:45 a.m.-4:15 p.m. CT.

Missouri, 209 Adams Street, Jefferson City, MO 65102. 7:45 a.m.-4:15 p.m. CT. Mailing address: P.O. Box 1787.

Montana, Federal Office Building, 301 South Park, Drawer 10056, Helena, MT 59626-0056. 7:30 a.m.-4:00 p.m. MT.

Nebraska, Federal Building, Room 487, 100 Centennial Mall North, Lincoln, NE 68508-3851. 7:45 a.m.-4:15 p.m. CT.

Nevada, 1535 Hot Springs Road, Suite 100, Carson City, NV 89701-0602. 7:45 a.m.-4:30 p.m. PT.

New Hampshire, Federal Building, 55 Pleasant Street, Room 219, Concord, NH 03301. 7:30 a.m.-4:00 p.m. EST.

New Jersey, Suburban Square Building, 25 Scotch Road, Second Floor, Trenton, NJ 08628-2595. 8:00 a.m.-4:30 p.m. ET.

New Mexico, 117 U.S. Court House, Post Office Box 1088, Santa Fe, NM 87504. 7:30 a.m.-4:00 p.m. MT.

New York, Leo W. O'Brien Federal Building, Ninth Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207. 7:30 a.m.-4:00 p.m. ET.

North Carolina, 310 New Bern Avenue, P.O. Box 26806, Raleigh, NC 27611. 7:45 a.m.-4:15 p.m. ET.

North Dakota, Federal Building, P.O. Box 1755, Bismarck, ND 58502. 7:45 a.m.-4:30 p.m. CT.

Ohio, 200 North High Street, Room 328, Columbus, OH 43215 7:30 a.m.-4:15 p.m. ET.

Oklahoma, Federal Office Building, Room 454, 200 N.W. Fifth Street, Oklahoma City, OK 73102. 8:00 a.m.-4:30 p.m. CT.

Oregon, The Equitable Center, Suite 100, 530 Center Street, NE., Salem, OR 97301. 7:45 a.m.-4:30 p.m. PT.

Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108. 8:00 a.m.-4:30 p.m. ET. Mailing address: P.O. Box 1086.

Puerto Rico, Office Number 150, U.S. Courthouse and Federal Building, Carlos Chardon Street, Hato Rey, PR 00918. 7:30 a.m.-4:00 p.m. Atlantic Standard Time.

Rhode Island, 380 Westminster Mall, Fifth Floor, Providence, RI 02903. 7:45 a.m.-4:15 p.m. ET.

South Carolina, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, SC 29201. 7:45 a.m.-4:15 p.m. ET.

South Dakota, P.O. Box 700, Federal Office Building, Pierre, SD 57501. 8:00 a.m.-4:30 p.m. CT.

Tennessee, Federal Building, U.S. Courthouse, 801 Broadway, Room A-926, Nashville, TN 37203. 8:00 a.m.-4:30 p.m. CT.

Texas, Room 826, Federal Office Building, 300 East Eighth Street, Austin, TX 78701. 7:30 a.m.-4:15 p.m. CT.

Utah, Federal Building, 125 South State Street, Salt Lake City, UT 84111. 7:45 a.m.-4:30 p.m. MT.

Vermont, Federal Building, Montpelier, VT 05602. 7:30 a.m.-4:30 p.m. ET. Mailing address: P.O. Box 568.

Virginia, Federal Building, Tenth Floor, 400 North Eighth Street, Richmond, VA 23240. 7:45 a.m.-4:15 p.m. ET.

Virgin Islands, U.S. Federal Building and Courthouse, Room 281, Charlotte Amalie, St. Thomas, Virgin Islands 00801. Time: 8:30-12:30 AST.

Washington, Evergreen Plaza, 711 South Capitol Way, Suite 501, Olympia, WA 98501. 7:30 a.m.-4:30 p.m. PT.

West Virginia, 550 Eagan Street, Suite 300 Charleston, WV 25301. 8:00 a.m.-4:30 p.m. ET.

Wisconsin, 4502 Vernon Boulevard, Madison, WI 53705-4905. 7:30 a.m.-4:15 p.m. CT.

Wyoming, 916 Evans Avenue, P.O. Box 1127, Cheyenne, WY 82003. 7:45 a.m.-4:30 p.m. MT.

DIRECT FEDERAL DIVISIONS

Division Engineer, Eastern Direct Federal Division, 1000 North Glebe Road, Arlington, VA 22201. 7:45 a.m.—4:15 p.m. ET.

Division Engineer, Central Federal Division, P.O. Box 25246, Denver, CO 80225. 7:45 a.m.—4:15 p.m. MT.

Division Engineer, Western Direct Federal Division, 610 East Fifth Street, Vancouver, WA 98661. 8:00 a.m.—4:30 p.m. PT.

3. Records Available Through Document Inspection Facilities

(a) The following records are available through the FHWA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Highway Administration;

(2) Any policy or interpretation issued by the Federal Highway Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(b) The following records are available through all Federal Highway Administration document inspection facilities:

(1) *FHWA Orders.* These orders are isssued by the Federal Highway Administration and used primarily to promulgate internal policy, instructions, and general guidance.

(2) *FHWA Notices.* These notices aare issued by the Federal Highway Administration and contain short term instructions or information which is expected to remain in effect for a predetermined period of time normally not to exceed one year.

(3) *FHWA Bulletins.* These bulletins are issued by the Federal Highway Administration and are used to promulgate one time announcements or transmit reports, publications, and other similar material.

(4) *FHWA/NHTSA Orders.* These are orders issued jointly by the Federal Highway Administration and the National Highway Traffic Safety Administration and contain policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Programs.

(5) *Technical Advisories.* These contain permanent or long-lasting detailed techniques or technical material that is advisory in nature.

(6) *FHWA Manuals.* These manuals are issued by the Federal Highway Administration and contain detailed procedures relating to policies and program responsibilities. They include the following:

(i) Federal-Aid Highway Program Manual. This Manual contains policies, procedures, standards, and guides relating to the administration of the Federal Aid Highway Program and the Direct Federal Construction Program.

(ii) Labor Compliance Manual.

(iii) Civil Rights-Equal Opportunity Manual.

(iv) Highway Planning Program Manual.

(v) Motor Carrier Safety Manual.

(vi) Highway Safety Program Manual.

(vii) Manual on Uniform Traffic Control Devices.

(viii) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP-85, 1985.

(ix) FP-79 Construction Manual.

(x) Emergency Relief Disaster Assistance Manual.

These Manuals contain details of compliance programs, accident investigations, enforcement programs, and interpretations.

(7) *Highway Safety Standards.* These highway related standards, issued by the Federal Highway Administration, apply to the aspect of State highway safety programs for which responsibility resides in the Federal Highway Administration under the Highway Safety Act of 1966 and delegations of authority by the Secretary of Transportation.

(8) Motor Carrier Safety Administrative Rulings.

(9) Motor Carrier Safety Waivers From Regulations (including Handicapped Driver Waiver Program).

(10) Indices for the above records.

4. Requests for Records Under Subpart F of this Part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request, in writing to the appropriate Federal Highway Administration official at the address listed in paragraph 2 above. If it is unknown where in FHWA the record(s) sought may be found, the request may be submitted to the FOIA Program Officer, at the address given in paragraph 2 above. Each request is subject to the appropriate fee prescribed in Subpart I of this part.

5. Determinations Not To Disclose Records

The FOIA Program Officer in Washington Headquarters is the only official authorized to deny requests for the disclosure of records for any Federal Highway Administration element, both headquarters and field.

6. Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers

Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, may appeal, in writing, to the Associate Administrator for Administration, Federal Highway Administration, 400 Seventh Street SW., Washington, DC. 20590, for reconsideration of the determination. The decision of the Associate Administrator for Administration is administratively final.

APPENDIX E TO PART 7—FEDERAL RAILROAD ADMINISTRATION

1. General.

This appendix describes the document inspection facility of the Federal Railroad Administration, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facility

The document inspection facility is maintained by the Executive Director of the Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. This facility is open to the public 8:30 a.m. to 5:00 p.m., ET, Monday through Friday except for legal public holidays and other special closings.

3. Records Available at the Document Inspection Facility

The following records are maintained at the document inpsection facility:

(a) Any material issued by the Federal Railroad Administration and published in the FEDERAL REGISTER, including regulations.

(b) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Federal Railroad Administration. Included are opinions and orders issued under the Safety Appliance Act, Hours of Service Act, Locomotive Inspection Act, Accident Reports Act, and the Federal Railroad Safety Act of 1970.

(c) Any policy or interpretation issued within the Federal Railroad Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Subject to § 7.41(a)(3) of this part, any administrative staff manual or instruction to staff, issued by the Federal Railroad Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) Public notice of pending administrative actions.

(f) Office of Safety Annual Report.

(g) Accident/Incident Bulletin.

(h) Rail-Highway Grade-Crossing Bulletin.

(i) Summary of accidents investigated by the Federal Railroad Administration.

(j) Certain railroad employee fatalities investigated by the Federal Railroad Administration.

(k) Subject to § 7.69 of this part, documents related to loans, loan guarantees, or grant programs conducted by the Federal Railroad Administration.

(l) An index to the material described in (a) through (d). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fees prescribed in subpart I of this part.

4. Requests for Identifiable Records Under Subpart F of this Part

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Executive Director, Federal Railroad Administration, Room 8212, 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Requester will be notified when it is estimated that the fee will likely exceed $25. Prepayment may be required before delivery is made.

5. Reconsideration of Department Not To Disclose Records and To Deny Fee Waivers.

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Federal Railroad Administrator, 400 Seventh Street, SW., Washington, DC 20590 for reconsideration of that determination. The decision of the Federal Railroad Administrator is administratively final.

APPENDIX F TO PART 7—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

1. *General.* This appendix describes the document inspection facilities of the National Highway Traffic Safety Administration (NHTSA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* Document inspection facilities are maintained for NHTSA Headquarters and each NHTSA regional office. Unless otherwise noted, these facilities, which are located at the following addresses, are open to the public from 7:45 a.m. to 4:15 p.m. local time, Monday through Friday, except legal public holidays and other special closings.

WASHINGTON HEADQUARTERS

National Highway Traffic Safety Administration, Technical Reference Division, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Technical Reference Division, Docket Section Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraph 3(a)(8) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

National Highway Traffic Safety Administration, Office of Management and Data Systems (OMDS), Room 5238, 400 Seventh Street, SW., Washington, DC 20590. (Material covered by paragraphs 3(a) (9) and (10) of this Appendix only). Hours of operation are 8:00 a.m. to 4:00 p.m. ET.

REGIONAL OFFICES

Region I—Regional Administrator, NHTSA, Transportation Systems Center, Kendall Square, Code 903, Cambridge, MA 02142. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, NHTSA, 222 Mamaroneck Avenue, Suite 204, White Plains, New York 10605. (New York, New Jersey, Puerto Rico, and Virgin Islands)

Region III—Regional Administrator, NHTSA, Airport Plaza Building, 793 Elkridge Landing Road, Room D-203, Linthicum, MD 21090. Hours of operation are 8:00 a.m. to 4:30 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, NHTSA, Suite 501, 1720 Peachtree Road, NW., Atlanta, GA 30309. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

Region V—Regional Administrator, NHTSA, 18209 Dixie Highway, Homewood, IL 60430. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin)

Region VI—Regional Administrator, NHTSA, Room 8A38, 819 Taylor Street, Fort Worth, TX 76102. Hours of operation are 8:00 a.m. to 4:30 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, NHTSA, P.O. Box 412515, Kansas City, MO 64141. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, NHTSA, 555 Zang Street, Fourth Floor, Denver, CO 80228. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, NHTSA, 211 Main Street, Suite 1000, San Francisco, CA 94105. (American Samoa, Arizona, California, Guam, Hawaii, and Nevada)

Region X—Regional Administrator, NHTSA, 3140 Jackson Federal Building, Seattle, Washington 98174. Hours of operation are 8:00 a.m. to 4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

3. *Records Available at Document Inspection Facilities*

(a) Certain documents not in the custody of the document inspection facility (for example, current defect investigations) may be reviewed there, but only if they are requested in advance. The following records are available at the NHTSA Headquarters document inspection facility:

(1) Final opinions and orders made in the adjudication of cases and issued by the National Highway Traffic Safety Administration.

(2) NHTSA test reports that assess manufacturer's compliance with Federal Motor Vehicle Safety Standards.

(3) Investigative reports concerning compliance with standards and possible safety-related defects.

(4) Summaries and detailed reports of motor vehicle recall campaigns.

(5) Consumers' complaint letters regarding motor vehicles.

(6) Contractors' technical reports documenting the results of research performed for NHTSA pursuant to contract.

(7) Multidisciplinary case studies on the causes of selected motor vehicle accidents.

(8) Rulemaking actions including comments and informal interpretations and opinions concerning provisions of the National Traffic and Motor Vehicle Safety Act of 1966, the Motor Vehicle Information and Cost Savings Act and the Highway Safety Act and regulations and standards issued thereunder which have been given to members of the public by National Highway Traffic Safety Administration officials.

(9) *NHTSA Orders.* These orders are issued by the National Highway Traffic Safety Administration and contain policy, instructions, and general procedures.

(10) *NHTSA Notices.* These notices are issued by the National Highway Traffic Safety Administration and transmit one-time or short-term announcements or temporary directives (1 year or less).

(b) The following records are available at all NHTSA document inspection facilities:

(1) *Motor Vehicle Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to new motor vehicles and equipment thereon.

(2) *Highway Safety Standards.* These standards, issued by the National Highway Traffic Safety Administration, apply to State highway safety programs.

(3) *State Highway Programs.* Reports on State highway programs presenting the proposed implementation of Federal Highway Standards on an annual and long-range basis. These reports are available at the NHTSA Headquarters document inspection facility and the appropriate Regional Administrator's Office.

4. *Requests for records under subpart F of this part.* Persons wishing to inspect a record, or to obtain a copy thereof, should submit a request in writing to the NHTSA facility in which such record is located. If the records are located at Washington Headquarters, requests should be sent to Director, Executive Secretariat, NHTSA, Room 5221, 400 Seventh Street, SW., Washington, DC 20590. If the records are located in a regional office, requests should be sent to the appropriate inspection facility.

5. *Reconsideration of determinations not to disclose records and to deny fee waivers.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal in writing, to the Associate Administrator for Administration, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

6. The fee for a search for a record or records identified by class or subject is pursuant to § 7.95 of this part.

APPENDIX G TO PART 7—URBAN MASS TRANSPORTATION ADMINISTRATION

1. General

This appendix describes the document inspection facilities of the Urban Mass Transportation Administration (UMTA), the kind of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the Urban Mass Transportation Administration Headquarters and each UMTA regional office. Except for legal public holidays and other special closings, these facilities are open to the public, Monday through Friday, at the prescribed times and locations:

WASHINGTON HEADQUARTERS

Urban Mass Transportation Administration, Office of Public Affairs, Room 9314, 400 Seventh Street, SW., Washington, DC 20590. (Working hours—8:30 a.m.-5:00 p.m. ET).

REGIONAL OFFICES

Region I—Regional Administrator, UMTA, Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142. 8:30 a.m.-5:00 p.m. ET. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Region II—Regional Administrator, UMTA, 26 Federal Plaza, Suite 14-110, New York, NY 10278. 8:30 a.m.-5:00 p.m. ET. (New Jersey and New York)

Region III—Regional Administrator, UMTA, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107. 8:00 a.m.-5:00 p.m. ET. (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Region IV—Regional Administrator, UMTA, 1720 Peachtree Road, NW., Suite 400, Atlanta, GA 30309. 8:30 a.m.-5:00 p.m. ET. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Puerto Rico)

Region V—Regional Administrator, UMTA, 300 S. Wacker Drive, Suite 1720, Chicago, IL 60606. 8:30 a.m.-5:00 p.m. CT. (Illinois, Indiana, Michigan, Ohio, and Wisconsin)

Region VI—Regional Administrator, UMTA, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102. 8:00 a.m.-5:00 p.m. CT. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Region VII—Regional Administrator, UMTA, 6301 Rockhill Road, Suite 100, Kansas City, MO 64131. 8:30 a.m.-5:00 p.m. CT. (Iowa, Kansas, Missouri, and Nebraska)

Region VIII—Regional Administrator, UMTA, 1050 17th Street, Suite 1822 Prudential Plaza, Denver, CO 80265. 8:30 a.m.-5:00 p.m. MT. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Region IX—Regional Administrator, UMTA, 211 Main Street, Room 1160, San Francisco, CA 94105. 8:30 a.m.-5:00 p.m. PT. (Nevada, California, Arizona, Hawaii, and Guam)

Region X—Regional Administrator, UMTA, 915 Second Avenue, Suite 3142, Seattle, WA 98174. 8:00 a.m.-4:30 p.m. PT. (Alaska, Idaho, Oregon, and Washington)

3. Records Available at the Document Inspection Facilities

The following records are located at the document inspection facilities:

(a) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued by the Office of the Secretary.

(b) Any policy or interpretation issued by the Urban Mass Transportation Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any administrative staff manual or instruction to staff, issued by the Urban Mass Transportation Administration that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to, and copies of, the internal and external directives of the Urban Mass Transportation Administration. The records and the index may be inspected without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

(e) Any proposed or final regulation issued by the Urban Mass Transportation Administration and any docket materials regarding these regulations. Public dockets for rulemakings are kept by the Docket Clerk, Room 9223, and are available for public inspection and copying.

4. Requests for Identifiable Records Under Subpart F of This Part

Each person desiring to inspect a record or to obtain a copy thereof, should submit the request in writing to the Director of Public Affairs, Urban Mass Transportation Administration, Room 9314, Department of Transportation Building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred, as provided in 49 CFR part 7. The requester may stipulate a maximum fee which he or she will pay. Prepayment may be required if authorized by 49 CFR Part 7.

5. *Reconsideration of Determinations Not To Disclose Records and To Deny Fee Waivers*

Any person who has been notified that a record or part of a record will not be disclosed or that a request or a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Deputy Administrator, Urban Mass Transportation Administration, Room 9328, 400 Seventh Street, SW., Washington, DC 20590, for reconsideration of that determination. The decision of the Deputy Administrator is administratively final.

APPENDIX H TO PART 7—SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

1. *General.* This appendix describes the document inspection facility of the Saint Lawrence Seaway Development Corporation, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility of the Saint Lawrence Seaway Development Corporation is maintained at its operations headquarters building in Massena, New York. This facility is open to the public during regular working hours (8:00 a.m. to 4:30 p.m. ET).

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Saint Lawrence Seaway Development Corporation.

(b) Any policy or interpretation issued by the Saint Lawrence Seaway Development Corporation, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any Administrative staff manual or instruction to staff, issued by the Saint Lawrence Seaway Development Corporation, that affects any member of the public, including the prescribing of any standard, procedure or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to the material described in (a) through (c). The records and the index may be inspected at the facility without charge. Copies of records may be obtained upon payment of fee prescribed in subpart I of this part.

4. *Requests for identifiable records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof should submit a request in writing to the Comptroller, Office of Finance/Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662.

5. Any person who has been notified that a record will not be disclosed; and any person who has been notified that his or her request for a fee waiver, in whole or in part, cannot be granted, may apply, in writing, to the Administrator, Saint Lawrence Seaway Development Corporation, Post Office Box 44090, Washington, DC 20026-4090, for reconsideration of the request. The decision of the Administrator is administratively final.

APPENDIX I TO PART 7—MARITIME ADMINISTRATION

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Maritime Administration (MARAD), the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for reasonably described records.

2. *Document inspection facility.* The document inspection facility for MARAD is maintained in Room 7300

of the Department of Transportation Building, 400 Seventh Street SW., Washington, DC 20590. The facility is open to the public between 9:30 a.m. and 4:30 p.m. eastern time, Monday through Friday, except legal public holidays and other special closings.

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Any material issued by MARAD and published in the FEDERAL REGISTER, including regulations, for the most recent five years.

(b) Opinions, decisions, and orders of the Maritime Administrator/MARAD and of the Maritime Subsidy Board (including concurrences and dissents, if any).

(c) Any policy or interpretation issued by MARAD, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued by MARAD, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public as described in Subpart E of this part.

(e) An index of the records described in (b) through (d).

4. *Requests for reasonably described records under Subpart F of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the Freedom of Information Officer, Maritime Administration, Room 7300, 400 Seventh Street, NW., Washington, DC 20590. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

5. The official having authority to make determinations on requests, pursuant to the Freedom of Information Act, is the Freedom of Information Officer or an appropriate designee.

6. *Appeal of determination not to disclose records and/or waive fees.* Any person who has been notified that a record or part of a record that has been requested will not be disclosed, or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal in writing to the Maritime Administrator, Maritime Administration, Room 7206, 400 Seventh Street, SW., Washington, DC 20590. The decision of the Maritime Administrator is administratively final.

APPENDIX J TO PART 7—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

1. General

This appendix describes the document inspection facilities of the Research and Special Programs Administration (RSPA), the kinds of records that are available for inspection and copying at these facilities, and the procedures by which members of the public may make requests for reasonably described records.

2. Document Inspection Facilities

Document inspection facilities are maintained at the RSPA Headquarters Office, the Office of Hazardous Materials Transportation (OHMT), the Office of Pipeline Safety (OPS), the Office of Aviation Information Management (OAIM), and the Transportation Systems Center (TSC) in Cambridge, Massachusetts. These facilities are open to the public from 9:00 a.m. to 4:30 p.m. ET, Monday through Friday, except legal public holidays and other special closings, at the following locations:

RSPA HEADQUARTERS

Freedom of Information Officer, Research and Special Programs Administration, Room 8406, 400 Seventh Street, SW., Washington, DC 20590.

Office of Hazardous Materials Transportation, DHM-50, Room 8424, 400 Seventh Street, SW., Washington, DC 20590.

pages tightly bound

Office of Pipeline Safety, DPS-1, Room 8417, 400 Seventh Street, SW., Washington, DC 20590.

OFFICE OF AVIATION INFORMATION MANAGEMENT

Chief of Data Services Branch, Data Requirements and Public Reports Division, Room 4201, 400 Seventh Street, SW., Washington, DC 20590.

TRANSPORTATION SYSTEMS CENTER

Public Information Officer, Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, MA 02142.

3. Records Available Through Document Inspection Facilities

(a) The following records are available through the RSPA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Research and Special Programs Administration.

(2) Any policy or interpretation issued by the Research and Special Programs Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Research and Special Programs Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) *RSPA Orders.* RSPA orders are issued by the Research and Special Programs Administration and are used primarily to promulgate internal RSPA policy, instructions, and general guidance.

(5) *RSPA Notices.* RSPA notices are issued by the Research and Special Programs Administration and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(6) Indices to the material described in (1) through (5).

(b) The following records are available through the Materials Transportation Bureau document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued by the Materials Transportation Bureau.

(2) Any policy or interpretation issued by the Research and Special Programs Administration including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff, issued by the Materials Transportation Bureau, that affects any member of the public including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(4) Indices to the material described in (1) through (3).

(c) The following records are available through the Data Services Branch of the Office of Aviation Information Management's inspection facility:

(1) Air Carrier Forms 41, 183, 217, 251, 291, 296-R, 298C, ICAO Supplemental Reports and ER-586 and Origination and Destination outputs which are maintained as a data base and reference source.

(d) The following records are available through the Transportation Systems Center document inspection facility:

(1) *RSPA Orders.* (Described in paragraph (a)(4) above).

(2) *RSPA Notices.* (Described in paragraph (a)(5) above).

(3) *TSC Orders.* TSC orders are issued by the Transportation Systems Center and are used primarily to pro-

mulgate internal TSC policy, instructions, and general guidance.

(4) *TSC Notices.* TSC notices are issued by the Transportation Systems Center and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(5) Indices to the material described in (1) through (4).

(d) The records and the indexes may be inspected at each facility without charge. A prepayment of fees may be required before copies of records may be obtained, as described in Subpart I this part.

4. *Requests for Records Under Subpart F of this Part*

Each person desiring to inspect a record, or to obtain a copy thereof, should submit a request in writing to the appropriate RSPA document inspection facility as identified in paragraph 2 of this Appendix. Should that facility not have custody of the record, it will forward the request to the appropriate office. If the location of the record is not known, the request should be submitted to the Freedom of Information Officer, RSPA Headquarters, and that official will forward the request to the appropriate office. Each request should be accompanied by a signed authorization to conduct the search and agreement to pay any costs incurred. Prepayment may be required before delivery is made. The requester may stipulate a maximum fee which he or she will pay.

5. *Reconsideration of Determination not to Disclose Records and to Deny Fee Waivers*

Any person who has been notified that a record or part of a record that has been requested will not be disclosed or that a request for a fee waiver or reduction will not be granted, either in whole or in part, may appeal, in writing, to the Research and Special Programs Administrator, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, for a reconsideration of the determination. The decision of the Administrator is administratively final.

PART 8—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

Sec.

8.1 Scope.
8.3 Applicability.
8.5 Definitions.
8.7 Spheres of responsibility.
8.9 Security Review Committee.
8.11 Authority to classify information.
8.13 Authority to downgrade or declassify.
8.15 Review of exempted and excluded material.
8.17 Procedures for submitting and handling requests for classification reviews.
8.19 Declassification of classified material after 30 years.
8.21 Burden of proof.
8.23 Classified material transferred to the Department of Transportation.
8.25 Public availability of declassified information.
8.27 Access to historical researchers, former Presidential appointees and contractors.
8.29 Industrial security.

AUTHORITY: E.O. 11652 (37 FR 5209), National Security Council Directive of May 17, 1972 (37 FR 10053), and secs. 3 and 9 of the Department of Transportation Act (49 U.S.C. 1652 and 1657).

SOURCE: 37 FR 28297, Dec. 22, 1972, unless otherwise noted.

§ 8.1 Scope.

This part sets forth procedures affecting the public, for the classification, declassification and availability of information, in implementation of Executive Order 11652, "Classification and Declassification of National Security Information and Material."

§ 8.3 Applicability.

The provisions of this part apply to all elements of the Department of Transportation including the National Transportation Safety Board.

§ 8.5 Definitions.

As used in this part:

"Classified information" means official information which requires protection against unauthorized disclosure in the interest of the national security of the United States and which has been so designated. The specific degree of protection required is desig-

best copy available

pages tightly bound

nated by the following classification categories:

(a) *Top secret.* That information or material which requires the highest degree of protection and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

(b) *Secret.* That information or material which requires a substantial degree of protection and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security.

(c) *Confidential.* That national security information or material which requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security.

"Classify" means to determine that official information requires, in the interest of national security, a specific degree of protection against unauthorized disclosure, coupled with a designation signifying that such a determination has been made.

"Declassify" means to determine that information no longer requires protection against unauthorized disclosure in the interest of national security. Material will be re-marked to reflect this determination.

"Downgrade" means to determine that classified information requires a lesser degree of protection against unauthorized disclosure in the interests of national security than that currently assigned. Material will be re-marked to reflect this determination.

§ 8.7 Spheres of responsibility.

(a) Pursuant to the provisions of section 7(B)(2) of Executive Order 11652, the Assistant Secretary for Administration is hereby designated as the senior staff officer of the Secretary of Transportation with assigned responsibilities to assure effective compliance with and implementation of the order, National Security Council Directives, and this part.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration shall be assisted by the Director of Investigations and Security who, in addition to other actions directed by this part, shall evaluate the overall application of and adherence to the security policies and requirements prescribed herein and who shall report his findings and recommendations to the Assistant Secretary for Administration, heads of administrations, Chairman, National Transportation Safety Board, and, as appropriate, to the Secretary.

(c) Secretarial Officers, heads of administrations, and the Chairman, National Transportation Safety Board, shall assure the effective administration of the provisions prescribed herein, that adequate personnel and funding are provided for this purpose, and that corrective actions which may be warranted are taken promptly.

§ 8.9 Security Review Committee.

(a) There is hereby established a Department of Transportation Security Review Committee which shall have authority to:

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of the Executive Order and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

(2) Act on appeals of requests for classification reviews, and appeals of requests for records under section 552 of Title 5, United States Code, (Freedom of Information Act), when the initial denial is based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or violation of any provision of the Executive order and implementing directives.

(b) The Security Review Committee shall be composed of the Assistant Secretary for Administration who shall serve as Chairman, the General Counsel, and the Director of Investigations and Security. When matters affecting a particular administration or the National Transportation Safety Board are at issue, the Associate Administrator for Administration for that administration, the Chief of Staff for the U.S. Coast Guard, or the General Manager for the National Transportation Safety Board, as the case may be, shall participate as an ad hoc member, together with the Chief Counsel for the particular element.

(c) The Chairman shall submit to the Interagency Classification Review Committee quarterly reports of Departmental Committee actions on classification review requests, classification abuses, and unauthorized disclosure of classified information.

§ 8.11 Authority to classify information.

(a) Executive Order 11652 confers upon the Secretary of Transportation the authority to originally classify information as SECRET or CONFIDENTIAL with further authorization to delegate this authority.

(b) The following delegations of authority to originally classify information as "SECRET" or "CONFIDENTIAL", which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Under Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration; Director of Investigations and Security; Director, Transportation Systems Center.

(2) *United States Coast Guard.* The Commandant; Assistant Commandant; Chief of Staff; Chief, Office of Marine Environment and Systems; Chief, Office of Operations; Chief, Intelligence Staff; Commander, Eastern Area; Commander, Western Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities Europe.

(3) *Federal Aviation Administration.* The Administrator; Deputy Administrator; Associate Administrator for Administration; Assistant Administrator for International Aviation Affairs; Director of Air Transportation Security; Regional Directors; Director, Aeronautical Center; Director, National Aviation Facilities Experimental Center.

(4) *National Transportation Safety Board.* Chairman of the Board; General Manager.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information as "Secret" or "Confidential."

(d) Previous delegations and redelegations of authority within the Department of Transportation to originally classify information "Top Secret," "Secret," or "Confidential" are hereby rescinded.

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by the official authorizing the original classification or by his successor; by a supervisory official of either, or by higher authority; or by the Departmental Security Review Committee.

§ 8.15 Review of exempted and excluded material.

(a) *Background*—(1) *Classified material produced after June 1, 1972.* Executive Order 11652 establishes a General Declassification Schedule under which classified material produced after June 1, 1972, becomes automatically downgraded and declassified at prescribed intervals. Exceptions to the General Declassification Schedule with respect to material produced after June 1, 1972, are:

(i) Material which is downgraded or declassified earlier than provided by the Schedule, based upon a predictable event or other development; and

(ii) Material which is exempt from automatic declassification because it may warrant protection for a period exceeding that provided by the Schedule.

Decisions to exempt material from the General Declassification Schedule may be made only by an official authorized to originally classify information as Top Secret, and only if the information falls within one of four categories established by the Executive order. Material which has been exempted from the General Declassification Schedule is subject to a mandatory classification review as specified in paragraph (b) of this section.

(2) *Classified material produced prior to June 1, 1972.* Classified material produced prior to June 1, 1972, and which was marked group 1, group 2, or group 3 in accordance with the provisions of Executive Order 10501, as amended (26 FR 8932, Sept. 22, 1961), or which is not group marked, is excluded from automatic declassification, but is subject to a mandatory classification review as specified in paragraph (b) of this section.

(b) *Requirement for classification review.* Classified material which is exempt from the General Declassification Schedule, and classified material which is excluded from automatic declassification shall be subject to a mandatory classification review for declassification purposes at any time after the expiration of 10 years from the date it was produced, provided that:

(1) A department or agency or a member of the public requests a review;

(2) The request describes the record with sufficient particularity to permit the record to be identified; and

(3) The record can be obtained with only a reasonable amount of effort.

(c) *Remarking.* Material which no longer warrants classification as determined by the review shall be declassified, and so marked. Material which continues to warrant classification shall be marked to indicate that a review was conducted. Whenever possible, a date for automatic declassification shall be established and the material so marked.

§ 8.17 Procedures for submitting and handling requests for classification reviews.

(a) The Director of Investigations and Security, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, is hereby designated as the office to whom a member of the public or another department or agency should submit a request for a classification review of classified material produced by or under the primary cognizance of the Department. Elements of the Department which may receive a request directly shall immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard, the Federal Aviation Administration, or the National Transportation Safety Board, the Director shall forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director shall serve as the office acting on the request.

(c) The office acting on the request shall:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to part 7, subpart H of the regulations of the Office of the Secretary (part 7, subpart H, of this subtitle), or, in the case of material of the National Transportation Safety Board, pursuant to the regulations of the National Transportation Safety Board (14 CFR part 401, subpart C) [part 401 was redesignated as 49 CFR part 801, at 40 FR 30235, July 17, 1975], the requester shall be so notified;

(2) Conduct a security review which shall include consultation with the office which produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director of Investigations and Security.

(d) Whenever a request is insufficient in the description of the record sought, the requester shall be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester shall be notified of the reasons why the request is denied and of his right to appeal the determination. Denial of a request to review based on the provisions of this paragraph shall be taken only under the most extreme circumstances.

(e) If the determination reached is that continued classification is required, the notification to the requester shall include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification shall also advise the requester of his right to appeal the determination. A requester who wishes to appeal a classification review decision, or who has not been notified of a decision after 60 days, may submit his appeal to the Chairman, Security Review Committee, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(f) If the determination reached is that continued classification is not required, the information shall be declassified and the material remarked. The office acting on the request shall then refer the request to the office originating the material or higher authority to determine if it is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and part 7 of the regulations of the Office of the Secretary (part 7 of this subtitle, "Public Availability of Information").

(1) If the material is available under the Freedom of Information Act, the requester shall be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester shall be so advised pursuant to part 7, subpart H of the regulations of the Office of the Secretary (part 7, subpart H, of this subtitle), or in the case of National Transportation Safety Board material, pursuant to the regulations of the National Transportation Safety Board (14 CFR part 401, subpart C) [part 401 was redesignated as 49 CFR part 801, at 40 FR 30235, July 17, 1975].

(2) If the material is not available under the Freedom of Information Act, the requester shall be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in subpart G of part 7 of the regulations of the Office of the Secretary (part 7, subpart G, of this subtitle), or in the case of National Transportation Safety Board material, in 14 CFR part 401, subpart E [part 401 was redesignated as 49 CFR part 801, at 40 FR 30235, July 17, 1975], apply.

(g) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Security Review Committee shall immediately acknowledge receipt and act on the matter within 30 days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Security Review Committee shall immediately consult with its counterpart committee for that department.

(1) If it is determined that the material produced in the Department requires continued classification, the requester will be so notified and advised of his right to appeal the decision to the Interagency Classification Review Committee.

(2) If it is determined that the material no longer requires classification, it shall be declassified and remarked. The committee shall refer the request to the general counsel, or to the head of the operating administration concerned, or to the Chairman, National Transportation Safety Board, as the case may be, to determine if the material is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and the relevant regulations, and the provisions set forth in paragraphs (f)(1) and (2) of this section shall be followed. A copy of the response to the requester shall be provided to the committee.

(h) Requests for a classification review of material more than 30 years old shall be referred directly to the Archivist of the United States and the requester shall be notified of the referral. In this event, the provisions of § 8.19 apply.

§ 8.19 Declassification of classified material after 30 years.

(a) Classified material produced in the Department after June 1, 1972, which remains in a protected status, will become automatically declassified at the end of 30 full calendar years after the date of its original classification. If it appears, however, that continued protection is essential to the national security or that disclosure would place a person in immediate jeopardy, the matter shall be referred to the Secretary, through the Director of Investigations and Security. A determination that continued classification is warranted may be made only by the Secretary.

(b) Classified material produced before June 1, 1972, and which is more than 30 years old will be reviewed systematically for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such material produced by the Department as is specifically identified by the Secretary as requiring protection. The Director of Investigations and Security is designated as the liaison officer for the Department with the Archivist for this purpose. Each administration shall advise the Director of Investigations and Security of classified material under its cognizance which is or becomes 30 years old. This notification shall also include recommendations for protection of the material considered to warrant continued classification in order that a determination by the Secretary may be obtained.

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating element to show that continued classification is warranted.

§ 8.23 Classified material transferred to the Department of Transportation.

(a) Classified material officially transferred to the Department pursuant to statute or Executive order in conjunction with a transfer of function, and not merely for storage purposes, shall be considered to have been originated by the Department for the purpose of downgrading and declassification.

(b) Classified material in the custody of the Department originated by a department or agency which has ceased to exist and whose functions and records were not officially transferred to another department shall be downgraded and declassified by the Department in accordance with the provisions of this part. If it appears that another department or agency may have an interest in the subject matter of the material from a classification standpoint, that department shall be advised of the nature of the material and the intention to downgrade or declassify. The notified department shall be allowed 30 days in which to express an objection, if it so desires, before action is taken. A difference of opinion which cannot be resolved shall be referred to the Departmental Security Review Committee which will consult with its counterpart committee for the respective department.

§ 8.25 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information which is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to regulations of the Office of the Secretary on public availability of information (Part 7 of this subtitle) and the Freedom of Information Act (5 U.S.C. 552).

(b) In furtherance of this policy, all classified material produced after

June 1, 1972, which is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and which becomes declassified, shall be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material shall be segregated or set aside for public release upon request.

§ 8.27 Access to historical researchers, former Presidential appointees and contractors.

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that:

(i) Access to the information will be clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or Department contractors, or where the information, if originated elsewhere, is in the sole custody of the Department. If any person requests access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Service, General Services Administration, he will be referred to the other agency or to the National Archives and Records Service.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. The security office shall obtain from the applicant completed Standard Form 86 in triplicate, investigation data for sensitive position, and Standard Form 87, fingerprint chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That he will abide by regulations issued by the Department:

(*a*) To safeguard classified information; and

(*b*) To protect information which has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That he understands that any classified information which he receives affects the security of the United States.

(iii) That he acknowledges an obligation to safeguard classified information or privileged information of which he gains possession or knowledge as a result of his access to files of the Department.

(iv) That he agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of his access except as specifically authorized in writing by the Department and further agrees that he shall not use the information for purposes other than those set forth in his application.

(v) That he agrees to authorize a review of his notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(vi) That he understands that failure to abide by conditions of this statement will constitute sufficient cause for canceling his access to classified information and for denying him any future access, and may subject him to criminal provisions of Federal law as referred to in this statement.

(vii) That he is aware and fully understands that the provisions of Title 18, United States Code, Crimes and Criminal Procedures, and of the Internal Security Act of 1950, as amended, Title 50, United States Code, prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security and for loss, destruction, or compromise of such information.

(viii) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security. That he understands that any material false statement which he makes knowingly and willfully will subject him to the penalties of Title 18, United States Code, section 1001.

(4) The security office shall process the forms in the same manner as specified for a preappointment national agency check for a critical-sensitive position. Upon receipt of the completed national agency check, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the Director of Investigations and Security for review and submission to the Secretary for final denial.

(5) If access to Top Secret, intelligence, or communications security information is involved a full field investigation is required. However, this investigation shall not be requested until the matter has been referred through channels to the Director of Investigations and Security for determination as to adequacy of the justification and the consent of other agencies as required.

(6) When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

(7) Approvals for access shall be valid for the duration of the current research project but no longer than 2 years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within 1 year from the date of completion of the current project, access may again be granted without obtaining a new National Agency Check. If more than 1 year has elapsed, a new National Agency Check must be obtained. The local security office shall promptly advise its security staff, headquarters, of all approvals of access granted under these provisions.

(8) An applicant may be given access only to that classified information which is directly pertinent to his approved project. He may review files or records containing classified information only in offices under the control of the Department. Procedures must be established to identify classified material to which he is given access. He must be briefed on local procedures established to prevent unauthorized access to the classified material while in his custody, for the return of the material for secure storage at the end of the daily working period, and for the control of his notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript must be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned and is consistent with the Department's public release policies.

(b) *Former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may be granted access to classified information or material which they originated, reviewed, signed, or received, while in public office, provided that:

(1) It is determined that such access is clearly consistent with the interests of national security; and

(2) The person agrees to safeguard the information, to authorize a review of his notes to assure that classified information is not contained therein, and that the classified information will not be further disseminated or published.

(c) *Contractors.* Classified information may be disclosed to DOT contractors, subcontractors, bidders, and grantees, and to contractors of other Government agencies, provided access to the information is necessary to the performance of the contract and required security clearances have been issued.

§ 8.29 Industrial security.

(a) *Background.* Executive Order 10865, as amended, Safeguarding Classified Information Within Industry (25 FR 1583, February 24, 1960) states,

> The Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, respectively, shall, by regulation, prescribe such specific requirements, restrictions, and other safeguards as they consider necessary to protect:
>
> (1) Releases of classified information to or within U.S. industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies; and
>
> (2) Other releases of classified information to or within industry that such agencies have responsibility for safeguarding. So far as possible, regulations prescribed by them under this order shall be uniform and provide for full cooperation among the agencies concerned.

Executive Order 10865 also prescribes criteria for the issuance of security clearances to industry personnel and requirements for the adjudication of controverted cases.

(b) *Implementing regulations.* Under an agreement between the Department of Defense and the Department of Transportation, regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 10865, as amended, have been extended to protect releases of classified information for which the Secretary of Transportation is responsible. Specifically, these regulations are:

(1) DOD 5220.22-R, Industrial Security Regulation;

(2) DOD 5220.22-M, Industrial Security Manual for Safeguarding Classified Information, together with supplements; and

(3) DOD 5220.6, Industrial Personnel Security Clearance Program.

These regulations are effective within the Department, which functions as a User Agency as prescribed in the regulations. Appropriate security staffs, project personnel, and contracting officers assure that actions required by the regulations are taken.

(c) *Liaison and coordination with Department of Defense.* The Director of Investigations and Security shall maintain liaison and coordination with the Department of Defense on behalf of the Department on overall industrial security matters. The Director shall develop such material as may be necessary to permit the Secretary to reach those determinations specifically reserved to him by Executive Order 10865, as amended and the agreement between the Department of Defense and the Department of Transportation.

PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.
9.1 Purpose.
9.3 Definitions.
9.5 Testimony by employees in proceedings involving the United States.
9.7 Legal proceedings between private litigants; general rule.
9.9 Legal proceedings between private litigants; subpoenas.
9.11 Legal proceedings between private litigants; factual testimony.
9.13 Legal proceedings between private litigants; expert or opinion testimony.
9.15 Legal proceedings between private litigants; disclosure of records.
9.17 Acceptance of service on behalf of Secretary.

AUTHORITY: Sec. 9, 80 Stat. 944, 49 U.S.C. 1657.

SOURCE: Amdt. 9-1, 34 FR 11972, July 16, 1969, unless otherwise noted.

§ 9.1 Purpose.

(a) This part prescribes the policies and procedures of the Department with respect to testimony of its employees as witnesses in legal proceedings, the acceptance of service of legal process and pleadings in legal proceedings involving the Department, and the production of records of the Department pursuant to subpoena.

(b) The General Counsel or the appropriate counsel of the operating administration concerned may grant permission to deviate from a policy or procedure prescribed by this part. He may grant that permission only when the deviation will not interfere with matters of operational or military necessity, and when:

(1) It is necessary to prevent a miscarriage of justice;

(2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

(3) The deviation is in the best interests of transportation activities fostered by the Department or the United States.

(c) This part does not apply to any legal proceeding in which an employee is to testify, while in leave status, as to facts or events that are in no way related to the duties he performs or to the functions of the Department.

§ 9.3 Definitions.

For purposes of this part:

"Appropriate counsel of the operating administration concerned" includes the General Counsel or Chief Counsel of the operating administration concerned and any person to whom he has delegated his authority under this part.

"Department" means the Department of Transportation, including the Office of the Secretary and the following operating administrations:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The Urban Mass Transportation Administration.

(f) The St. Lawrence Seaway Development Corporation.

"Legal proceeding" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

"Legal proceeding between private litigants" means any legal proceeding in which neither the United States nor the Department of Transportation is directly or indirectly involved.

"Employee of the Department" means an officer or employee of the Department and an active duty officer or enlisted member of the Coast Guard.

(g) The National Highway Traffic Safety Administration.

[Amdt. 9-1, 34 FR 11972, July 16, 1969, as amended by Amdt. 9-2, 35 FR 5331, Mar. 31, 1970; Amdt. 9-3, 36 FR 431, Jan. 13, 1971; Amdt. 9-4, 36 FR 4291, Mar. 4, 1971]

§ 9.5 Testimony by employees in proceedings involving the United States.

(a) Except as provided in paragraph (c) of this section, an employee of the Department may not testify as an expert or opinion witness for any party other than the United States in any legal proceeding in which the United States is involved, but may testify as to facts.

(b) Whenever, in any legal proceeding involving the United States, the attorney in charge of presenting the case for the United States requests it, the General Counsel or appropriate counsel of the operating administration concerned shall arrange for an employee of the Department to testify as a witness for the United States.

(c) An employee of the Department may appear and testify as an expert or opinion witness on behalf of an active duty officer or enlisted member of the Coast Guard in any legal proceeding conducted by the Coast Guard.

[Amdt. 9-1, 34 FR 11972, July 16, 1969, as amended by Amdt. 9-4, 36 FR 4290, Mar. 4, 1971]

§ 9.7 Legal proceedings between private litigants; general rule.

Subject to §§ 9.9 and 9.13, an employee of the Department may not testify as an expert or opinion witness, as to any matter related to his duties or the functions of the Department, in any legal proceeding between private litigants, for the following reasons:

(a) To conserve the time of employees for conducting official business.

(b) To minimize the possibility of involving the Department in controversial issues that are not related to its mission.

(c) To prevent the possibility that the public will misconstrue variances between the personal opinions of employees and departmental policy.

(d) To avoid spending the time and money of the United States for private purposes.

§ 9.9 Legal proceedings between private litigants; subpoenas.

(a) Whenever, in a legal proceeding between private litigants, an employee of the Department is served with a subpoena or is requested to testify, he shall immediately report the service or request to the General Counsel or appropriate counsel of the operating administration concerned, who shall determine whether the employee is required to comply and shall, in appropriate cases, arrange for legal representation for the employee.

(b) Whenever an employee's compliance with a subpoena would adversely affect the performance of official duties or require producing records that are not available for public disclosure, the General Counsel or appropriate counsel of the operating administration concerned shall attempt to have the subpoena withdrawn or modified.

§ 9.11 Legal proceedings between private litigants; factual testimony.

(a) An employee of the Department who has been subpoenaed in a legal proceeding between private litigants, and who is required to comply with the subpoena, shall testify only as to facts within his personal knowledge, even if the facts are contained in a report that he is not allowed to produce. However, he must obtain the permission of the General Counsel or appropriate counsel of the operating administration concerned before disclosing any information that is restricted by statute or regulation.

(b) An employee who gives factual testimony shall avoid any statements of opinion.

§ 9.13 Legal proceedings between private litigants; expert or opinion testimony.

If, while testifying in a legal proceeding between private litigants, an employee of the Department is asked for expert or opinion testimony, he shall decline to answer on the grounds that he is forbidden to do so by this part. If he is then ordered by the body conducting the proceeding to testify, he shall do so.

§ 9.15 Legal proceedings between private litigants; disclosure of records.

(a) Copies of any records available for public inspection under part 7 of this subtitle, "Public Availability of Information", are available, as provided in that part, to litigants upon request.

(b) If an employee of the Department receives a subpoena or request to produce records in court or before any other body, he shall refer it to the General Counsel or appropriate counsel of the operating administration concerned. If the subpoena or request calls for producing records the release of which is authorized, counsel shall advise that the subpoena or request be honored.

(c) An employee of the Department may not produce a record except upon a clearance from the General Counsel or appropriate counsel of the operating administration concerned. If copies of records that are available for public inspection under part 7 of this subtitle are subpoenaed, the person subpoenaing them is liable for the fee established under that part for the production of those records, including any search for them.

(d) If an employee is served with a subpoena calling for records that the General Counsel or appropriate counsel of the operating administration concerned determines should not be released, the General Counsel or appropriate counsel of the operating administration concerned shall attempt to have the subpoena withdrawn or modified. If this cannot be done, the employee shall appear at the time and place specified in the subpoena, accompanied by an attorney from the Office of the General Counsel, appropriate counsel of the operating administration concerned, or the Department of Justice, as appropriate, and explain to the authority conducting the proceeding that a statute or regulation prohibits him from producing the records.

(e) If an employee who follows the procedure in paragraph (d) of this section is ordered to show cause why he should not be cited for contempt of court, the General Counsel or appropriate counsel of the operating administration concerned shall request the Department of Justice to represent the employee.

§ 9.17 Acceptance of service on behalf of Secretary.

Process or pleadings in any legal proceeding may be served, at the option of the server, on the General Counsel or appropriate counsel of the operating administration concerned, with the same effect as if served upon the Secretary or the head of the operating administration concerned, as the case may be. The official accepting the service under this section shall acknowledge the service and take further action as appropriate.

PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

Subpart A—Applicability and Policy

Sec.
10.1 Applicability.
10.3 Policy.
10.5 Definitions.

Subpart B—General

10.11 Administration of part.
10.13 Privacy Act Officer.
10.15 Protection of records.

Subpart C—Maintenance of Records

10.21 General.
10.23 Accounting of disclosures.
10.25 Mailing lists.
10.27 Government contractors.
10.29 Social Security numbers.

Subpart D—Availability of Records

10.31 Requests for records.
10.33 Acknowledgment and access.
10.35 Conditions of disclosure.
10.37 Identification of individual making request.
10.39 Location of records.

Subpart E—Correction of Records

10.41 Requests for correction of records.
10.43 Time limits.
10.45 Statement of disagreement.

Sec.

Subpart F—Procedures for Reconsidering Decisions not to Grant Access to or Amend Records

10.51 General.

Subpart G—Exemptions

10.61 General exemptions.
10.63 Specific exemptions.

Subpart H—Fees

10.71 General.
10.73 Payment of fees.
10.75 Fee schedule.
10.77 Services performed without charge.

Subpart I—Criminal Penalties

10.81 Improper disclosure.
10.83 Improper maintenance of records.
10.85 Wrongfully obtaining records.

APPENDIX A TO PART 10—EXEMPTIONS
APPENDIX B TO PART 10—OFFICE OF THE SECRETARY
APPENDIX C TO PART 10—U.S. COAST GUARD
APPENDIX D TO PART 10—FEDERAL AVIATION ADMINISTRATION
APPENDIX E TO PART 10—FEDERAL HIGHWAY ADMINISTRATION
APPENDIX F TO PART 10—FEDERAL RAILROAD ADMINISTRATION
APPENDIX G TO PART 10—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
APPENDIX H TO PART 10—URBAN MASS TRANSPORTATION ADMINISTRATION
APPENDIX I TO PART 10—SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
APPENDIX J TO PART 10—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

AUTHORITY: Pub. L. 93-579, sec. 9, Department of Transportation Act, Pub. L. 89-670, 49 U.S.C. 1657.

SOURCE: 45 FR 8993, Feb. 11, 1980, unless otherwise noted.

Subpart A—Applicability and Policy

§ 10.1 Applicability.

(a) This part implements section 552a of title 5, United States Code, as well as other provisions of the Privacy Act of 1974, and prescribes rules governing the availability of those records of the Department of Transportation which relate to citizens of the United States and aliens lawfully admitted for permanent residence.

(b) Appendices B through J to this part:

(1) Describe the places and times at which records are available for inspection and copying;

(2) Indicate the systems of records located at each facility;

(3) Identify the officials having authority to deny requests for disclosure of records under this part;

(4) Describe the procedures to be followed in requesting correction of a record in accordance with § 10.41 of this part; and

(5) List additional personal identification requirements in accordance with § 10.37 of this part.

(c) The Assistant Secretary for Administration may amend Appendix B to this part to reflect any changes in the items covered by that appendix, relating to the Office of the Secretary of Transportation. The Administrator concerned may amend the appendix applicable to that administration to reflect any changes in the terms covered by that appendix.

(d) Appendix A to this part identifies systems of records which are exempt from some of the requirements of this part, in accordance with Subpart G and 5 U.S.C. 552a (j) and (k). Appendix A may be amended by the General Counsel upon the request of the Assistant Secretary for Administration in the case of a system of records maintained by the Office of the Secretary or the Administrator concerned in the case of a system of records maintained by an operating administration.

§ 10.3 Policy.

It is the policy of the Department of Transportation to comply with the letter and the spirit of the Privacy Act (the Act). Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use or uses of the system. Further, no system of records is exempted from the requirements of the Act unless it is determined that to do so is in the best interest of the government with due concern for individual rights.

§ 10.5 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Administrator" means the head of an operating administration and includes the Commandant of the Coast Guard.

"Department" means the Department of Transportation, including the Office of the Secretary and the following operating administrations:

(a) The United States Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The St. Lawrence Seaway Development Corporation.

(h) The Research and Special Programs Administration.

"General Counsel" means the General Counsel of the Department.

"Includes" means "includes but is not limited to;"

"Individual" means a citizen of the United States or an alien lawfully admitted;

"Maintain" includes maintain, collect, use, or disseminate;

"May" is used in a permissive sense to state authority or permission to do the act prescribed;

"Record" means any item, collection, or grouping of information about an individual that is maintained by the Department including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the name of, or an identifying number, symbol, or other identifying particular assigned to, the individual, such as a finger or voice print or a photograph;

"Secretary" means the Secretary of Transportation or any person to whom has been delegated authority in the matter concerned;

"System of records" means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13, United States Code; and

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

Subpart B—General

§ 10.11 Administration of part.

Except as provided in subpart F of this part, authority to administer this part in connection with the records of the Office of the Secretary is delegated to the Assistant Secretary for Administration. Authority to administer this part in connection with records in each operating administration is delegated to the Administrator concerned. An Administrator may redelegate to officers of that administration the authority to administer this part in connection with defined systems of records. An Administrator, however, may redelegate his or her duties under subparts F and G of this part only to his or her deputy and to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that administration or at the same location as the majority of that administration's systems of records.

§ 10.13 Privacy Act Officer.

(a) To assist in the oversight of the implementation and continuing administration and in evaluating the effectiveness of compliance with the Act, the Assistant Secretary for Administration appoints a principal coordinating official with the title Privacy Act Officer, and one Privacy Act Coordinator from his staff.

(b) Inquiries concerning Privacy Act matters, or requests for assistance, may be addressed to the Privacy Act Officer (M-30), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(c) Administrators may designate Privacy Act Officers or Coordinators to act as central coordinators within their administrations to assist them in administering the Act.

§ 10.15 Protection of records.

(a) No person may, without permission, remove any record made available for inspection or copying under this part from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy, in whole or in part, such a record.

(b) Section 641 of title 18 of the United States Code provides, in pertinent part, as follows:

> Whoever * * * steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record * * * or thing of value of the United States or of any department or agency thereof * * * shall be fined not more than $10,000 or imprisoned not more than 10 years or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year or both * * *.

(c) Section 2071 of title 18 of the United States Code provides, in pertinent part, as follows:

> Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than 3 years, or both.

Subpart C—Maintenance of Records

§ 10.21 General.

Except to the extent that a system of records is exempt in accordance with subpart G of this part, the Department, with respect to each system of records:

(a) Maintains in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Department required to be accomplished by statute or by executive order of the President;

(b) Collects information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, or privileges under Federal programs;

(c) Informs each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual of:

(1) The authority (whether granted by statute, or by excecutive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses, as published pursuant to paragraph (d)(4) of this section, which may be made of the information; and

(4) The effects, if any, on the individual of not providing all or any part of the requested information;

(d) Publishes in the FEDERAL REGISTER at least annually a notice of the existence and character of the system of records, including;

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(5) The policies and practices regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the official responsible for the system of records;

(7) The procedures whereby an individual can be notified upon request if the system of records contains a record pertaining to that individual;

(8) The procedures whereby an individual can be notified upon request how to gain access to any record pertaining to that individual contained in the system of records, and how to contest its content; and

(9) The categories of sources of records in the system;

(e) Maintains all records which are used in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to § 10.35(a)(2), makes reasonable efforts to assure that such records are accurate, complete, timely, and relevant for the Department's purposes;

(g) Maintains no record describing how any individual exercises rights guaranteed by the First Amendment unless:

(1) Expressly authorized by the General Counsel; and

(2) Expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(h) Makes reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

§ 10.23 Accounting of disclosures.

Each operating administration and the Office of the Secretary, with respect to each system of records under its control:

(a) Except for disclosures made under § 10.35(a) (1) or (2) of this part, keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under § 10.33; and

(2) the name and address of the person or agency to whom the disclosure is made;

(b) Retains the accounting made under paragraph (a) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(c) Except for disclosures made under § 10.33(a)(7) of this part, makes the accounting made under paragraph (a)(1) of this section available to the individual named in the record at his request; and

(d) Informs any person or other agency about any correction or notation of dispute made by the agency in accordance with § 10.45 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 10.25 Mailing lists.

An individual's name and address is not sold or rented unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 10.27 Government contractors.

When the Department provides by a contract for the operation by or on behalf of the Department of a system of records to accomplish a function of the Department, the requirements of this part are applied to such system. For purposes of Subpart I, CRIMINAL PENALTIES, any such contractor and any employee of the contractor are considered, in accordance with section 3(m) of the Privacy Act, to be employees of the Department.

§ 10.29 Social Security numbers.

(a) No individual is denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security account number.

(b) The provisions of paragraph (a) of this section do not apply to:

(1) Any disclosure which is required by Federal statute; or

(2) The disclosure of a Social Security number when such disclosure was required under statute or regulation adopted prior to January 1, 1975, to verify the identity of an individual.

(c) When an individual is requested to disclose his or her Social Security account number, that individual is informed whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses are made of it, and what detriments, including delay in the location of records, are incurred if the number is not provided.

Subpart D—Availability of Records

§ 10.31 Requests for records.

(a) Ordinarily, each person desiring to determine whether a record pertaining to him or her is contained in a system of records covered by this part or desiring access to a record covered by this part, or to obtain a copy of such a record, shall make a request in writing as provided in the pertinent appendix to this part. In exceptional cases oral requests are accepted.

(b) Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located. If assistance is required to determine the system of records identification number assigned in the systems notices, such assistance may be obtained from the appropriate Privacy Act Officer or his Assistant. Refer to § 10.13 for procedures for requesting assistance.

§ 10.33 Acknowledgment and access.

(a) Requests by an individual to determine whether he or she is the subject of a record in a system of records, or requesting access to a record in a system of records, should be acknowledged within 10 working days, where the request is by mail. For requests in person, an immediate response is given, either granting access or informing such individual when notification or access may be expected.

(b) If the response granting access or copies of the record is made within 10 working days, separate acknowledgment is not required.

(c) Although requests for access to a record are normally in writing, *e.g.*, by filing a written form or letter, it is the option of the individual to mail or present the request form in person.

§ 10.35 Conditions of disclosure.

(a) No record which is contained within a system of records within the Department is disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) To those officers and employees of the Department who have a need for the record in the performance of their duties;

(2) Required under Part 7 of this title which implements the freedom of Information Act;

(3) For a routine use as defined in § 10.5 and described pursuant to § 10.21(d)(4);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Department with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of the Congress, or to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of the Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(b) Any individual requesting access to his or her record or to any information pertaining to that individual which is contained within a system of records within the Department has access to that record or information unless the system of records within which the record or information is contained is exempted from disclosure in accordance with Subpart G, provided, however, that nothing in this part is deemed to require that an individual be given access to any information compiled in reasonable anticipation of a civil action or proceeding. No exemption contained in Subpart G of Part 7 of the regulations of the Office of the Secretary is relied upon to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this part. Any individual who is given access to a record or information pertaining to him is permitted to have a person of his or her own choosing accompany him and to have a copy made of all or any portion of the record or information in a form comprehensible to the individual. When deemed appropriate, the individual may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

(c) *Medical records.*Where requests are for access to medical records, including psychological records, the decision to release directly to the individual, or to withhold direct release, shall be made by a medical practitioner. Were the medical practitioner has ruled that direct release will do harm to the individual who is requesting access, normal release through the individual's chosen medical practitioner will be recommended. Final review and decision on appeals of disapprovals of direct release will rest with the General Counsel.

(d) Any person requesting access to records or to any information pertaining to other individuals is not granted such access unless that person can show that he or she has obtained permission for such access from the individual to whom the record pertains, unless the request comes within one of the exceptions of paragraph (a) of this section.

§ 10.37 Identification of individual making request.

No record or information contained in a system of records is disclosed to an individual nor is any correction of a record in accordance with Subpart E made at the request of an individual unless that individual demonstrates that he or she is who he or she claims to be. Normally, identity can be proven for individuals who appear in person by the presentation of an identifying document issued by a recognized organization (*e.g.,* a driver's license or a credit card) and which contains a means of verification such as a photograph or a signature. For requests by mail, the unique identifier used in the system should be included if known. Responses to mail requests are normally sent only to the name and address listed in the system of records. In the case of particularly sensitive records, additional identification requirements may be imposed. In such cases, these additional requirements are listed in the public notice for the system and in the appropriate appendix to this part.

§ 10.39 Location of records.

Each record made available under this subpart is available for inspection and copying during regular working hours at the place where it is located or, upon reasonable notice, at the document inspection facilities of the Office of the Secretary or each administration as set forth in the appendix applicable to that office or administration. Original records may be copied but may not be released from custody. Upon payment of the appropriate fee, copies are mailed to the requester.

Subpart E—Correction of Records

§ 10.41 Requests for correction of records.

Any person who desires to have a record pertaining to that person corrected shall submit a written request detailing the correction and the reasons the record should be so corrected. Requests for correction of records shall be submitted in accordance with the procedures of the organization set forth in Appendices B through J to this part for the appropriate operating element of the Department.

§ 10.43 Time limits.

Within ten days (excluding Saturday, Sunday, and legal holidays) of the receipt in accordance with § 10.41 of a request by an individual to amend a record pertaining to him, the receipt of the request is acknowledged in writing. If a determination is made to correct the record as requested, the correction is promptly made. If a determination is made not to correct a record the individual is informed promptly of the right to appeal in accordance with Subpart F. If an appeal of a refusal to correct a record is in accordance with Subpart F, a determination whether to correct the record is made within thirty days (excluding Saturday, Sunday and legal holidays) of the receipt of the appeal unless, for good cause shown the Administrator concerned, or in the case of the Office of the Secretary, the General Counsel, extends such period. Where an extension is taken, the party taking the appeal is promptly notified of such fact.

§ 10.45 Statement of disagreement.

If a determination is made not to amend a record, the requester is informed of the right to file a concise statement setting forth the reasons for disagreement with the refusal to amend. In any disclosure containing information about which an individual has filed such a statement of disagreement, the portions of the record which are disputed are noted clearly and copies of the statement of disagreement provided. If the Administrator concerned or his or her delegee, or in the case of the Office of the Secretary, the General Counsel or his or her delegee, deems it appropriate, copies of a concise statement of the reasons for not making the amendments requested may be provided along with the statement of disagreement.

Subpart F—Procedures for Reconsidering Decisions not to Grant Access to or Amend Records

§ 10.51 General.

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that access is not to be granted or who determines not to amend a record in a requested manner, gives a written statement of the reasons for that determination to the person making the request and indicates the name and title or position of each person responsible for the denial of such request and the procedure for appeal within the Department.

(b) Any person:

(1) Who has been given a determination pursuant to paragraph (a) of this section, that access will not be granted; or

(2) Who has been informed that an amendment to a requested record will not be made;

may apply to the Administrator concerned, or in the case of the Office of the Secretary, to the General Counsel for review of that decision. A determination that access will not be granted or a record amended is not administratively final for the purposes of judicial review unless it was made by the Administrator concerned or his or her delegee, or the General Counsel or his or her delegee, as the case may be. Upon a determination that an appeal will be denied, the requester is informed in writing of the reasons for the determination, and the names and titles or positions of each person responsible for the determination, and that the determination may be appealed to the District Court of the United States in the district in which the complainant resides, or has his or her principal place of business, or in which the records are located, or in the District of Columbia.

(c) Each application for review must be made in writing and must include all information and arguments relied upon by the person making the request. It is recommended that such request be made within 180 days of the date of the initial denial; however, exceptions to this time period are considered in the event that a longer time is required for good reasons.

(d) Upon a determination that a request for the correction of a record will be denied, the requester is informed that he may file a concise statement in accordance with § 10.45.

(e) Each application for review must indicate that it is an appeal from a denial of a request made under the Privacy Act. The envelope in which the application is sent should be marked prominently with the words "Privacy Act." If these requirements are not met, the time limits described in § 10.43 do not begin to run until the application has been identified by an employee of the Department as an application under the Privacy Act and has been received by the appropriate office.

(f) The Administrator concerned, or the General Counsel, as the case may be, may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the Administrator concerned, or the General Counsel, as the case may be, as to the availability of the record or whether to amend the record is administratively final.

(g) The decision by the Administrator concerned, or the General Counsel, as the case may be, not to disclose a record under this part is considered a determination for the purposes of section 552a(g) of title 5, United States Code, "Civil Remedies."

(h) Any final decision by an Administrator or his or her delegee, identified in Appendices B through J of this part, not to grant access to or amend a record under this part, is subject to concurrence by the General Counsel or his or her delegee.

Subpart G—Exemptions

§ 10.61 General exemptions.

(a) The Assistant Secretary for Administration, with regard to the Investigations Divisions; the Federal Aviation Administrator, with regard to the FAA's Investigative Record System (DOT/FAA 815) and also with regard to the police functions of the National Capital Airport Police; the Commandant of U.S. Coast Guard, with regard to the Intelligence and Security Division; and the Federal Railroad Administrator, with regard to the Alaska Railroad Special Agents, may exempt from any part of the Act and this part except subsections (b), (c)(1) and (2), (e)(4)(A), through (F), (e)(6), (7), (9), (10), and (11), and (i) of the Act, and implementing §§ 10.35, 10.23(a) and (b), 10.21(d)(1) through (6), 10.81, 10.83, and 10.85, any systems of records, or portions thereof, which they maintain which consist wholly of;

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(b) The requirements (including general notice) of sections 553(b)(1), (2) and (3), and (c) and (e) of title 5, United States Code, will be met by publication in Appendix A to this part, which must, at a minimum, specify:

(1) The name of the system; and

(2) The specific provisions of the Act from which the system is to be exempted and the reasons therefor.

(c) Any decision to exempt a system of records under this section is subject to concurrence by the General Counsel.

(d) Any person may petition the Secretary in accordance with the provisions of part 5 of this title, to institute a rulemaking proceeding for the amendment or repeal of any exemptions established under this section.

§ 10.63 Specific exemptions.

The Secretary or his or her delegee, in the case of the Office of the Secretary, or the Administrator or his or her delegee, in the case of an operating administration, may exempt any system of records which is maintained by the Office of the Secretary or the administration, as the case may be, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act and implementing §§ 10.23(c); 10.35(b); 10.41; 10.43; 10.45; 10.21(a) and 10.21(d)(6), (7) and (8) of this part, under the following conditions;

(a) The system of records must consist of:

(1) Records subject to the provisions of section 552(b)(1) of title 5, United States Code;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of § 10.61(a)(2): Provided, however, That if any individual is denied any right, privilege, or benefit to which that individual would otherwise be entitled by Federal law, or for which that individual would otherwise be eligible, as a result of the maintenance of such material, such material is provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, the effective date of the Privacy Act of 1974, under an implied promise that the identity of the source would be held in confidence;

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18, United States Code;

(4) Records required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure

of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, the effective date of the Privacy Act of 1974, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) The requirements (including general notice) of sections 553 (b) (1), (2) and (3), and (c) and (e) of title 5, United States Code, will be met by publication in appendix A to this part, which must, at a minimum, specify:

(1) The name of the systems; and

(2) The specific provisions of the Act from which the system is to be exempted and the reasons therefor.

(c) Any decision to exempt a system of records under this section is subject to the concurrence of the General Counsel.

(d) Any person may petition the Secretary in accordance with the provisions of 49 CFR part 5, to institute a rulemaking for the amendment or repeal of any exemptions established under this section.

Subpart H—Fees

§ 10.71 General.

This subpart prescribes fees for services performed for the public under this part by the Department.

§ 10.73 Payment of fees.

The fees prescribed in this subpart may be paid by check, draft, or postal money order payable to the Treasury of the United States.

§ 10.75 Fee schedule.

(a) Copies of documents by photocopy or similar method:	
Each page not larger than 11 x 17 inches:	
First page	$.25
Each page	.05
(b) Copies of documents by typewriter: Each page	2.00
(c) Certified copies of documents:	
(1) With Department of Transportation seal	3.00
(2) True copy, without seal	1.00
(d) Photographs:	
(1) Black and white print (from negative)	1.25
(2) Black and white print (from print)	3.15
(3) Color print (from negative)	3.50
(4) Color print (from print)	6.25
(e) Duplicate data tapes—each reel of tape or fraction thereof	36.00

The applicant must furnish the necessary number of blank magnetic tapes. The tapes must be compatible for use in the supplier's computer system, ½ inch wide and 2,400 feet long, and must be capable of recording data at a density of 556 or 800 characters per inch. Unless otherwise designated, the tapes will be recorded at 556 CPI density. The Department of Transportation is not responsible for damaged tape. However, if the applicant furnishes a replacement for a damaged tape, the duplication process is completed at no additional charge.

(f) Microreproduction fees are as follows:	
(1) Microfilm copies, each 100 foot roll or less	$3.75
(2) Microfiche copies, each standard size sheet (4" x 6" containing up to 65 frames)	.15
(3) Aperture card to hard copy, each copy	.50
(4) 16mm microfilm to hard copy:	
First	.25
Additional	.07
(g) Computerline printer output, each 1,000 lines or fraction thereof	1.00

§ 10.77 Services performed without charge.

(a) No fee is charged for time spent in searching for records or reviewing or preparing correspondence related to records subject to this part.

(b) No fee is charged for documents furnished in response to:

(1) A request from an employee or former employee of the Department for copies of personnel records of the employee;

(2) A request from a Member of Congress for official use;

(3) A request from a State, territory, U.S. possession, county or municipal government, or an agency thereof;

(4) A request from a court that will serve as a substitute for the personal court appearance of an officer or employee of the Department;

(5) A request from a foreign government or an agency thereof, or an international organization.

(c) Documents are furnished without charge or at a reduced charge, if the Assistant Secretary of Administration or the Administrator concerned, as the case may be, determines that waiver or reduction of the fee is in the public interest, because furnishing the information can be considered as primarily benefiting the general public.

(d) When records are maintained in computer-readable form rather than human-readable form, one printed copy is made available which has been translated to human-readable form without a charge for translation but in accordance with § 10.75(g), regarding computer line-printed charges.

Subpart I—Criminal Penalties

§ 10.81 Improper disclosure.

Any officer or employee of the Department who by virtue of his or her employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this part and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(1).

§ 10.83 Improper maintenance of records.

Any officer or employee of the Department who willfully maintains a system of records without meeting the notice requirements of § 10.21(d) of this part is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(2).

§ 10.85 Wrongfully obtaining records.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department under false pretenses is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(3).

APPENDIX A TO PART 10—EXEMPTIONS

Part I. General exemptions. Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i):

A. The Investigative Records System maintained by the Assistant Inspector General for Investigations, Office of the Inspector General, Office of the Secretary (DOT/OST 100).

B. Police Warrant Files and Central Files maintained by the Police Branches, Washington National and Dulles International Airports, Federal Aviation Administration (DOT/FAA 807).

C. Intelligence and Security Investigative Case Systems (DOT/CG 611), maintained by the Intelligence and Security Division, U.S. Coast Guard, at headquarters and district offices.

D. The Investigative Records System maintained by the Federal Aviation Administration regarding criminal investigations conducted by offices of Investigations and Security at headquarters and FAA Regional and Center Security Divisions (DOT/FAA 815).

E. Administrative Action and Legal Enforcement System, maintained by the Chief Counsel, Federal Aviation Administration (DOT/FAA 805).

The purpose of these exemptions is to prevent the compromise or impairment of criminal investigations conducted by the

Office of Investigations and Security, OST; the Airport Police Branches; and the Investigations and Security Division, USCG; and the Office of Investigation and Security, Regional and Center Security Division of FAA.

Part II. Specific exemptions. A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2):

1. Investigative Record System maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, FAA Headquarters, Washington, D.C. (DOT/FAA 815).

2. FHWA Investigations Case File System, maintained by the Office of Program Review and Investigations, Federal Highway Administration (DOT/FHWA 214).

3. FHWA Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases, maintained by the Bureau of Motor Carrier Safety, Federal Highway Administration (DOT/FHWA 204).

4. Recreational Boating and Law Enforcement Cases (DOT/CG 505), maintained by the Office of Boating Safety, U.S. Coast Guard.

5. Port Safety Reporting System—Individual Violation Histories (DOT/CG 561), maintained by the Office of Marine Environment and Systems, U.S. Coast Guard.

6. Merchant Vessel Casualty Reporting System (DOT/CG 590), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

7. U.S. Merchant Seaman's Records (DOT/CG 589), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

8. Intelligence and Security Investigative Case Systems (DOT/CG 611), maintained by the Office of Operations, U.S. Coast Guard.

9. Port Security Case System (DOT/CG 612), maintained by the Office of Operations, U.S. Coast Guard.

10. DOT/NHTSA Investigations of Alleged Misconduct or Conflict of Interest, maintained by the Associate Administrator for Administration, National Highway Traffic Safety Administration (DOT/NHTSA 458).

11. Investigations of Violations of Marine Safety Laws (DOT/CG 587), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

12. Civil Aviation Security System (DOT/FAA 813), maintained by the Civil Aviation Security Service, Federal Aviation Administration.

The purpose of these exemptions is to protect investigatory materials compiled for law enforcement purposes. Disclosure of such material would hamper law enforcement by prematurely disclosing the knowledge of illegal activity and the evidentiary basis for possible enforcement actions.

B. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures), and (d) (Access to Records) of 5 U.S.C. 552a:

1. Alaska Railroad Security and Freight Claims Investigatory Files maintained by the Alaska Railroad, Federal Railroad Administration (DOT/FRA 102).

2. Administrative Action and Legal Enforcement System, maintained by the Chief Counsel, Federal Aviation Administration (DOT/FAA 805).

3. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

The purpose of these exemptions is to prevent the compromise or impairment of law enforcement investigations by alerting individuals that they are the subject of investigation, and to prevent the disclosure of the identity or sources of information promised confidentiality, in accordance with 5 U.S.C. 552a(k)(2).

C. The system of records known as the Alaska Railroad Examination of Operating Personnel, maintained by the Alaska Railroad, Federal Railroad Administration (DOT/FRA 100), is exempt from the provisions of subsection (d) of 5 U.S.C. 552a. The release of these records would compromise their value as impartial measurement standards for appointment and promotion within the Federal Service.

D. Those portions of the following systems of records consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or access to classified information or used to determine potential for promotion in the armed services, are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a to the extent that disclosure of such material would reveal the identity of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k) (5) and (7)):

1. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

2. Intelligence and Security Investigative Case System (DOT/CG 611), maintained by the Office of Operations, U.S. Coast Guard.

3. Officer Selection and Appointment System (DOT/CG 625), maintained by the Office of Personnel, U.S. Coast Guard.

4. Official Officer Service Records (DOT/CG 626), maintained by the Office of Personnel, U.S. Coast Guard.

5. Enlisted Recruiting Selection Record System maintained by the Office of Personnel, U.S. Coast Guard.

6. Officer, Enlisted, and Recruiting Selection Test Files (DOT/CG 628), maintained by the Office of Personnel, U.S. Coast Guard.

7. Enlisted Personnel Record System, (DOT/CG 629), maintained by the Office of Personnel, U.S. Coast Guard.

8. Coast Guard Personnel Security Program (DOT/CG 633), maintained by the Office of Personnel, U.S. Coast Guard.

9. Official Coast Guard Reserve Service Record System (DOT/CG 676), maintained by the Office of Reserve, U.S. Coast Guard.

10. Investigative Record System, maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, Headquarters, Washington, D.C. (DOT/FAA 815).

11. Military Training and Education Records (DOT/CG 622), maintained by the Office of Personnel, U.S. Coast Guard.

12. Files pursuant to suitability for employment with National Highway Traffic Safety Administration (DOT/NHTSA-457) containing confidential investigatory reports.

The purpose of these exemptions is to prevent disclosure of the identities of sources who provide information to the government concerning the suitability, eligibility, or qualifications of individuals for Federal civilian employment, contracts, access to classified information, or appointment or promotion in the armed services, and who are expressly or, prior to September 27, 1975, implied promised confidentiality (5 U.S.C. 552a(k) (5) and (7)).

E. Those portions of the following systems of records consisting of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

1. Officer, Enlisted and Recruiting Selection Test Files (DOT/CG 628), maintained by the Office of Personnel, U.S. Coast Guard.

2. Official Coast Guard Reserve Service Record System (DOT/CG 676), maintained by the Office of Reserve, U.S. Coast Guard.

3. Military Training and Education Records (DOT/CG 622), maintained by the Office of Personnel, U.S. Coast Guard.

4. Reference Files (DOT/NHTSA 457), maintained by the National Highway Traffic Safety Administration personnel offices to determine fitness for employment prior to hiring.

The purpose of these exemptions is to preserve the value of these records as impartial measurement standards for appointment and promotion within the Federal service.

F. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

1. Investigative Record System maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

2. Personnel Security Records System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

3. Civil Aviation Security System (DOT/FAA 813), maintained by the Civil Aviation Security Service, Federal Aviation Administration.

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

G. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552a(b)(1) are exempt from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) of 5 U.S.C. 552a:

1. Investigative Records System (DOT/FAA 815), maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, Headquarters, Washington, D.C.

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

APPENDIX B TO PART 10—OFFICE OF THE SECRETARY

1. *Introduction.* This appendix, with respect to the Office of the Secretary:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Office of the Secretary;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

An individual requiring assistance, concerning this appendix or systems maintained in the Office of the Secretary, may contact the Privacy Act Officer, or Privacy Act Coordinator, Office of the Assistant Secretary for Administration, M-20, 400 Seventh Street, SW., Washington, D.C. 20590.

2. *Availability for Inspection and Copying.*

a. Records in systems maintained in the Office of the Secretary (OST) are available at 400 Seventh Street SW., Washington, D.C., except where otherwise noted:

(1) Records are maintained at 2100 Second Street SW., Washington, D.C., for the following systems:

(a) DOT/OST 011 Discrimination Complaint Investigative Files;

(b) DOT/OST 042 Technical Pipeline Safety Standards Committee.

(2) DOT/OST 013 Employee Management Files: Records for the employees at each location are located as delineated in the system notice.

(3) DOT/OST 015 Funds Management Records: Central records are maintained at 400 Seventh Street SW., Washington, D.C. Records for the applicable region are maintained in the office of each of the eleven Regional Emergency Transportation Coordinators, as delineated in the system notice.

(4) DOT/OST 022 National Defense Executive Reserve File: Complete records are maintained at 400 Seventh Street SW., Washington, D.C. Applicable records are maintained in a wide variety of field offices as delineated in the system notice.

(5) DOT/OST 028 Personnel Convenience Files: Employee records applicable to the Complaints Division of the Office of Civil Rights of the Office of the Secretary are located at 2100 Second Street SW., Washington, D.C. All other records are located at 400 Seventh Street SW., Washington, D.C.

(6) DOT/OST 043 Telephone Directory and Locator System: Records are stored on magnetic tape at 13 Massachusetts Avenue NW., Washington, D.C. However, access is controlled by the System Manager: Chief, Accounting Operations Center, Room 2228, 400 Seventh Street SW., Washington, D.C.

(7) DOT/OST 048 Transportation Research Activities Information System: Records are stored on magnetic tape at the Transportation Systems Center, Cambridge, Massachusetts. Individuals desiring access to their own personal data should contact the System Manager: Chief, Resources Management Division, DPA-20, Department of Transportation, 400 Seventh Street SW., Washington, D.C.

(8) DOT/OST 049 Transportation Research Information System: Records are maintained on magnetic tape at the Battelle Laboratories, Columbus, Ohio. Individuals desiring access to their own personal data should contact the System Manager: Chief, Resources Management Division, DPA-20, Department of Transportation, 400 Seventh Street SW., Washington, D.C.

(9) DOT/OST 050 Executive Team Cadre Listings: Records are maintained at 400 Seventh Street SW., Washington, D.C., and at the offices of the Regional Emergency Transportation Coordinators, as delineated in the system notice.

(10) Records are maintained at the Transportation Systems Center, Kendall Square, Cambridge, Massachusetts, for the following systems:

(a) DOT/TSC 700 Automated Management Information Systems;

(b) DOT/TSC 701 Employee Travel Records;

(c) DOT/TSC 702 Legal Counsel Information Files;

(d) DOT/TSC 703 Occupational Safety and Health Reporting System;

(e) DOT/TSC 704 Stand-by Personnel Information;

(f) DOT/TSC 706 Automated Planning System;

(g) DOT/TSC 707 Automated Manpower Distribution System;

(h) DOT/TSC 708 Combined Federal Campaign Information;

(i) DOT/TSC 709 Minority Information Files;

(j) DOT/TSC 711 Blood Donor Information File;

(k) DOT/TSC 712 Automated Payroll/Personnel/Communications/Security System;

(l) DOT/TSC 713 Employee Payroll-Manpower Distribution System;

(m) DOT/TSC 714 Health Unit Employee Medical Records;

(n) DOT/TSC 715 Bi-Weekly Personnel Status Report.

b. Records are available for inspection and copying at the applicable locations delineated above between the hours of 9 A.M. and 5:30 P.M., except Saturdays, Sundays, and holidays. Access to certain records may be restricted in accordance with exemptions applied and noticed in accordance with sections 3 (j) and (k) of the Privacy Act of 1974. Individuals desiring access to their own records should follow the instructions contained in the system notice published for each system of records. Requests for access shall be submitted to the System Manager having responsibility for the system in which the records are maintained, unless the system notice describing the system prescribes or permits submission to some other official or officials.

3. *Systems of Records.* A compilation of notices describing the systems of records maintained in the Department of Transportation is published annually in the FEDERAL REGISTER. The notices describing the systems maintained in the Office of the Secretary are published in a block within the overall compilation and each is identified by a three-digit number preceded by the acronym, OST; e.g., OST 013 (except those maintained at the Transportation Systems Center which uses the acronym, TSC; e.g., TSC 701). The basic compilation of system notices, for systems subject to the Privacy Act of 1974, which are maintained in the Office of the Secretary, is published in the FEDERAL REGISTER annually.

4. *Access to Records.* Requests for access to records are processed in accordance with the rules provided in Subpart D of these regulations.

a. A request from an individual for access to a record pertaining to such individual is granted promptly unless:

(1) The record was compiled in reasonable anticipation of a civil action or proceeding; or

(2) The system of records is one which has been exempted from the notification and access provisions of the Privacy Act by rulemaking; or

(3) The record is not part of a system of records required to be noticed in accordance with the provisions of the Privacy Act and is not otherwise required to be made available by a law or regulation; or

(4) The System Manager or other cognizant official determines that the particular circumstances justify denial of access; or

(5) The information requested is contained in and is inseparable from another individual's record.

b. When information sought from a system of records in the Office of the Secretary includes information that has been furnished by an operating element of the Department or by another agency, as the case may be, the Systems Manager or other cognizant official consults the operating element or the other agency, as the case may be, before granting access. If referral of the request to the operating element or the other agency, as the case may be, will provide a more expeditious decision with resulting probable access, the request may be referred to the operating element or the other agency, as the case may be, but the requester is notified of the referral.

c. When a Systems Manager or other cognizant official in the Office of the Secretary determines that a request for access should be denied, the request and the reason(s) for the determination are referred to the Assistant Secretary for Administration for decision. In the event of a decision to deny access, the Office of the Assistant Secretary for Administration notifies the requester in writing in accordance with section 10.51 of these regulations.

5. *Requests To Correct or Alter Records.* An individual may request that a record pertaining to such individual be amended to correct any portion thereof which such individual believes is not accurate, relevant, timely, or complete.

a. A request to amend a record must:

(1) Be in writing and signed by the individual to whom the record pertains;

(2) Be clearly marked "Request for Amendment of Record";

(3) Contain a statement that the request is being made under the provisions of the Privacy Act of 1974;

(4) Contain the name and address of the individual making the request;

(5) Specify the name and location of the systems of records, as set forth in the system notice, in which the record is maintained;

(6) Specify the title and business address of the official designated in the "Contesting Record Procedures" paragraph of the applicable system notice;

(7) Specify the particular record in the system which the individual is seeking to amend;

(8) Clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reason for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition; and

(9) Be addressed to or delivered in person to the office of the official designated in the "Contesting Records Procedures" paragraph of the applicable system notice. A request delivered to an office in person must be delivered during the regular office hours of that office.

6. *Personal Identification Requirements.* Generally, the identification rules in paragraph 10.35 of these regulations apply to systems maintained in the Office of the Secretary. In addition, specific requirements for some systems are delineated below:

a. The notarized signature of the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 001 General Employee Records System;

(2) OST 030 Personal Management Convenience Files.

(NOTE: An individual's social security number is an optional means of identification, which may be supplied in lieu of notarization. Social security numbers are used on these records as authorized under the provisions of Executive Order 9397, dated November 22, 1943.)

b. The notarized signature of the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 006 Confidential Statement of Employment and Financial Interests; and

(2) OST 037 Records of Confirmation Proceeding Requirements.

c. The number of the Federal Emergency Assignee Identification Card (SF 138) issued to the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 022 National Defense Executive Reserve File;

(2) OST 036 Planning Officials for Emergency Functions and;

(3) OST 050 Executive Team Cadre Listings.

d. The name of the applicable advisory committee is required for notification and access to records in the following system: OST 008 Departmental Advisory Committee Files.

APPENDIX C TO PART 10—U.S. COAST GUARD

1. *Introduction.* This appendix supplements the procedures set forth for the Department of Transportation in Subparts A through I of 49 CFR Part 10.

2. *Availability for Inspection and Copying.*

a. Individuals who wish the Coast Guard to examine a system of records covered by this part to determine whether any records in the system contain information about them or who wish to gain access to or receive copies of records which contain information about them, should address written requests either to the appropriate system manager as listed in the annual description of Coast Guard record systems appearing in the FEDERAL REGISTER or to: Commandant (G-CMA), U.S. Coast Guard Headquarters, 400 Seventh Street SW., Washington, D.C. 20590. Requests may also be delivered in person to the above address between 7:30 A.M. and 4 P.M. (Monday through Friday, excluding holidays).

b. The Coast Guard acknowledges requests for notification of the existence of a record within ten working days (excluding Saturdays, Sundays and holidays) after receipt of a completed request. The Coast Guard makes every effort within 30 days of the receipt of a request for access to a record to:

(1) Make the record available;

(2) Notify the requester of the need for additional information; or

(3) Notify the requester of any denial, either in whole or in part, of access to a record. Para. 3 of this appendix sets forth the addresses of Coast Guard district offices and headquarters units where records in decentralized systems may be located.

3. *Systems of Records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Coast Guard is set forth in the FEDERAL REGISTER. Assistance may be requested in exercising his or her rights by an individual addressing the Privacy Act Coordinator at one of the following U.S. Coast Guard offices nearest his residence:

a. Commander, 1st Coast Guard District, 150 Causeway Street, Boston, MA 02114.

b. Commander, 2nd Coast Guard District, Federal Building, 1520 Market Street, St. Louis, MO 63013.

c. Commander, 3rd Coast Guard District, Governors Island, New York, NY 10004.

d. Commander, 5th Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23705.

e. Commander, 7th Coast Guard District, Federal Building, 51 S.W. 1st Avenue, Miami, FL 33130.

f. Commander, 8th Coast Guard District, Customhouse, New Orleans, LA 70130.

g. Commander, 9th Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199.

h. Commander, 11th Coast Guard District, Heartwell Building, 19 Pine Avenue, Long Beach, CA 90802.

i. Commander, 12th Coast Guard District, 630 Sansome Street, San Francisco, CA 94126.

j. Commander, 13th Coast Guard District, Federal Building, 915 Second Avenue, Seattle, WA 98174.

k. Commander, 14th Coast Guard District, P.O. Box 48, FPO San Francisco 96610.

l. Commander, 17th Coast Guard District, FPO Seattle 98771.

m. Superintendent, U.S. Coast Guard Academy, New London, CT 06320.

n. Commanding Officer, U.S. Coast Guard Yard, Curtis Bay, Baltimore, MD 21225.

o. Commanding Officer, U.S. Coast Guard Training Center, Governors Island, New York, NY 10004.

p. Commanding Officer, U.S. Coast Guard Training Center, Cape May, NJ 08204.

q. Commanding Officer, U.S. Coast Guard Training Center, Government Island, Alameda, CA 94501.

r. Commanding Officer, U.S. Coast Guard Supply Center, 830 3rd Avenue, Brooklyn, NY 11232.

s. Commanding Officer, U.S. Coast Guard Institute, P.O. Substation 18, Oklahoma City, OK 73169.

t. Commanding Officer, U.S. Coast Guard Aircraft Repair & Supply Center, Elizabeth City, NC 27909.

u. Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, AL 36608.

v. Commanding Officer, U.S. Coast Guard Radio Station (NMH), 7223 Telegraph Road, Alexandria, VA 22310.

w. Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, VA 23490.

x. Officer in Charge, Record Depot, U.S. Coast Guard Air Station, Elizabeth City, NC 27909.

y. Commander, Coast Guard Activities, Europe, London, Box 50, FPO New York 09510.

z. Commanding Officer, U.S. Coast Guard Training Center, Petaluma, CA 94952.

aa. Commander, U.S. Coast Guard Air Base, Elizabeth City, NC 27909.

bb. Commanding Officer, U.S. Coast Guard Electronics, Engineering Center, Wildwood, NJ 08260.

cc. Commanding Officer, Research & Development Center, Avery Point, Groton, CT 06340.

dd. Commanding Officer, U.S. Coast Guard Oceanographic Unit, Building 159E, Navy Yard Annex, Washington, D.C. 20590.

4. *Access to Records.*

a. The Coast Guard honors only those requests for notification, access, or amendment made by:

(1) The individual to whom the record pertains;

(2) The parent or guardian of a minor to whom the record pertains;

(3) The legal guardian of a person to whom the record pertains when that person has been declared incompetent by reason of physical or mental disability by a court having jurisdiction of the matter; or

If made by a person other than the individual to whom the record pertains, the request must specify the relationship of the requester to that individual.

b. Written requests for information or amendment must be signed by the requester. Requests for access to records containing sensitive or detailed personnel information (including, but not limited to, earnings and tax statements, employee payroll records, employee grievance and appeal files, civilian, officer, and enlisted personnel files, and health and medical records (subject to the conditions of 49 CFR 10.33 (b)) may be required to contain the following notarized certification:

I, ———, do hereby certify that I am the individual to whom the record in question pertains.

(or)

I am the parent or guardian of the minor to whom the record in question pertains.

(or)

I am the legal guardian of the individual determined by a court to be incompetent to whom the record in question pertains.

(Notarization)

(Signature) ————————

(Date) ————————

5. *Requests to Correct or Alter Records.* The official responsible for administering a system of records, in consultation as appropriate with the System Manager, Privacy Act Coordinator, and Privacy Act Officer, initially determines whether to grant requests under 49 CFR 10.41 to amend records. Requests must be made as provided in paragraph 2a. of this appendix. Requests for amendment must contain a complete description of the item sought to be changed and documentation to substantiate the grounds for the requested change. The Coast Guard acknowledges the receipt of completed requests for amendment within ten working days. As promptly as possible the Coast Guard advises the requester whether or not the change has been made, and in cases where a change has been made, transmits a copy of the amended record to the requester.

a. When a request for access to a record or amendment of a record is denied, in whole or in part, the manager of the system of records involved notifies the requester in writing, of the reasons for the denial and furnishes the requester a statement of the name and position or title of each person responsible for the denial. The requester also is advised of the right to file a written appeal of the adverse decision within 180 days of receipt of the initial denial. Appeals must be addressed to: Commandant (G-CMA), U.S. Coast Guard Headquarters, 400 Seventh Street, SW., Washington, D.C. 20590.

b. Within 30 working days of the receipt of a written appeal, the Commandant or his designee makes an independent review of the record and decides whether or not to make the requested disclosure or amendment. If the appeal is granted, the Coast Guard promptly notifies the requester of the decision in writing and transmits to the requester a copy of the record or amended record. If the appeal is denied, the Coast Guard promptly notifies the requester, in writing, of the reasons for the denial and furnishes the requester a statement of the name and position or title of each person responsible for the denial. The Coast Guard also informs the requester of the right to seek judicial review of the adverse decision pursuant to 5 U.S.C. 552a(g)(1).

c. In addition to appealing an adverse determination of a request to amend a record, the requester may file a concise "statement of disagreement" setting forth the reasons for disagreeing with the refusal of the Coast Guard to amend the record. The notification by the Coast Guard of the denial of an initial request for amendment or the denial of an administrative appeal for an amendment informs the requester of the right to file a statement of disagreement.

d. The Commandant of the Coast Guard, by Commandant Instruction 5212.11 (26 September 1975), has redelegated to the Chief of Staff the authority under 49 CFR Part 10 to:

(1) Exempt systems of records from certain provisions of the Privacy Act;

(2) Make final administrative determinations not to disclose or amend a record; and

(3) Issue extensions of review time.

This authority may not be redelegated further.

6. *Personal Identification Requirements.*

a. When an individual requests notification, access, or amendment in person, he or she must show identification such as a driver's license, military or employment identification card, credit card, or medicare card. An individual requesting in person information about or amendment to a "sensitive" record may be required to complete the notarized certification set forth in paragraph 4.b of this appendix.

b. The Coast Guard may require more specific information in order to establish the identify of a requester. For example, the Coast Guard may require that a legal guardian or personal representative produce certified copies of court documents appointing him to his position. The Coast Guard may independently verify the identity of a requester by telephone contact with the requester, personal identification by Coast Guard employees who may know the requester, or any other lawful means considered appropriate under the circumstances.

c. An individual may be accompanied by a person of the individual's choosing while reviewing records to which he or she has been granted access, provided that the individual signs a statement authorizing the accompanying person to do so. An individual granted access to a record may be required to sign and notarize a statement authorizing the Coast Guard to release the record to a person (e.g., his attorney) designated by the individual.

d. No request for information or amendment is considered complete until all necessary identification material has been provided. No copies of records are provided to individuals until they pay appropriate fees as set forth in 49 CFR Subpart H.

APPENDIX D TO PART 10—FEDERAL AVIATION ADMINISTRATION

1. *Introduction.* This appendix:

a. Describes the procedures for determining if an individual is the subject of a record maintained by the Federal Aviation Administration;

b. Describes the availability of records and prescribes requirements for identifying an individual who requests a record pertaining to him or her;

c. Prescribes procedures for granting access to an individual upon that individual's request for the record pertaining to him or her;

d. Prescribes procedures for reviewing a request from an individual concerning the amendment of any record pertaining to him or her;

e. Prescribes procedures for making a determination on the request of an individual for amendment of any record pertaining to him or her; and

f. Prescribes procedures for an appeal within the FAA of a determination not to grant access to or amendment of records.

2. *Availability for Inspection and Copying.* Records may be inspected at the FAA facility identified for the particular system of records appearing in the systems notices published in the FEDERAL REGISTER. These facilities are open to the public during regular business hours, except Saturdays, Sundays, and Federal holidays.

3. *Systems of Records.*

a. A list of FAA systems of records pertaining to the Privacy Act indicating the geographic locations and the responsible systems managers has been published in the FEDERAL REGISTER and appears as follows:

(1) September 19, 1977, on pages 47069-47088,

(2) August 28, 1978, on page 38511, and

(3) May 15, 1979, on pages 28439-28447.

b. Any individual who is unable to determine in which FAA-maintained system the records pertaining to him or her may be found may submit a written request for assistance to the attention of the Privacy Act Coordinator located at the region or center nearest to his residence. The addresses for the regional and center facilities of the FAA are listed below:

(1) FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. 20591;

(2) Alaskan Region, 632 Sixth Avenue, Anchorage, AK 99501;

(3) Central Region, 601 East 12th Street, Kansas City, MO 64106;

(4) Southern Region, 3400 Whipple Street, East Point, GA (Mailing address: P.O Box 20636, Atlanta, GA 30320);

(5) Southwest Region, 4400 Blue Mound Road (Mailing address: P.O. Box 1689, Fort Worth, TX 76101);

(6) Western Region, 5651 West Manchester Avenue (Mailing address: P.O. Box 92007, Los Angeles, CA 90009);

(7) Eastern Region, Federal Building, JFK International Airport, Jamaica, NY 11430;

(8) Pacific Region, 1333 Kalakaua Avenue (Mailing address: P.O. Box 4009 Honolulu, HI 96813);

(9) Aeronautical Center, 6400 South MacArthur Boulevard (Mailing address: P.O. Box 25082, Oklahoma City, OK 73125);

(10) National Aviation Facilities Experimental Center, Tilton Road, Route 563 (near Pomona, NJ), (Mailing address: Atlantic City, NJ 08405);

(11) New England Region, 12 New England Executive Park, Burlington, MA 01803;

(12) Great Lakes Region, 2300 East Devon, Des Plaines, IL 60018;

(13) Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; and

(14) Northwest Region, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, WA 98108.

4. *Access to Records.*

a. Any individual desiring to inspect a record or obtain a copy of a record pertaining to him or her must present a written request in accordance with the provisions of this section. An individual making a request under this section may either appear in person or submit a request by mail to the address and attention of the system manager as it appears in the list of systems of records published in the FEDERAL REGISTER. The individual must first determine in which system of records he or she believes the particular records pertaining to him or her are maintained by examining the categories of records and routine uses in the list of the systems of records published in the FEDERAL REGISTER and available at the addresses set forth in paragraph 3.b of this appendix.

b. The individual must include in the request the information necessary to identify the specific system of records as it appears in the list of the systems of records of the FAA published in the FEDERAL REGISTER.

c. Upon request by any individual to gain access to an FAA record that contains information pertaining to him or her, the FAA official responsible for the record informs the individual whether the requested record is exempt under Subpart G of this part.

d. An individual making a request under this section is permitted to inspect and have a copy made of any record pertaining to him or her in a form comprehensible to him or her, if:

(1) He or she has given identification in accordance with section 6 of this appendix;

(2) The record is not exempt under subpart G of this part; and

(3) The record was not compiled in reasonable anticipation of a civil action or proceeding. For medical records see § 10.35(d).

e. Notwithstanding paragraph d of this section, if an individual requesting a record pertaining to him or her is accompanied by a person of his or her own choosing to review the record, the individual making the request must submit a signed statement authorizing the discussion of the record in the presence of the accompanying person.

f. Each request for a record determined to be releasable under paragraph d of this section is complied with within ten days, excluding Saturdays, Sundays, and Federal holidays. If additional time is necessary to make the requested record comprehensible to the individual requesting it, the FAA official responsible for the record notifies the individual within ten days of the request of the estimated time required to fill the request.

g. Any individual whose request for access to a record pertaining to him or her is denied may file a written appeal to the Administrator, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Appeals submitted under this section must comply with the requirements of § 10.51 of this part.

5. *Requests to Correct or Alter Records.*

a. Any individual may request an amendment of any record pertaining to him or her maintained by the FAA in a system of records, by submitting the request in writing to the attention of the FAA official responsible for the record at the address appearing in the list of systems of records published in the FEDERAL REGISTER.

b. Each request for an amendment of a record must be accompanied by a written explanation as to why the individual believes the present record is not accurate, timely, relevant, or complete. The individual making the request may submit any documentation he or she wishes in support of his request.

c. Upon receipt of a request for an amendment of a record, the FAA official responsible for the record reviews the record and supporting documentation and determines if there is a sufficient basis upon which to make a decision to make the requested amendment. In any case, the request must be acknowledged within 10 days.

d. If the FAA official responsible for the record determines under paragraph c of this section that additional information is necessary before a decision can be made as to whether to make the requested amendment, the official notifies the individual making the request to amend specifying what additional information is necessary.

e. If the FAA official responsible for the record determines that the requested amendment should be made, the official amends the record, notifies the individual making the request, and sends to that individual a copy of the corrected record, as well as to other persons or agencies to whom the record may have been disclosed (See 49 CFR 10.23(d)).

f. If the FAA official responsible for the record determines that the requested amendment should be denied, the official forwards to his supervisor the request for amendment with all supporting documentation and reasons for the denial.

g. If the supervisor determines that the requested amendment should be made, the supervisor follows the procedures in paragraph e of this section.

h. If the supervisor determines that the requested amendment should be denied, the supervisor notifies the individual making the request of the denial, the reasons therefor, and informs the individual of the FAA procedures for appealing the denial.

i. Any individual whose request for correction or alteration of a record pertaining to him or her is denied may file a written appeal to the Administrator, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Appeals submitted under this section must comply with the requirements of § 10.51 of this part.

6. *Personal Identification Requirements.*

a. Each individual making a request under this appendix for a record pertaining to him or her must present appropriate identification before the requested record is released. Types of appropriate identification include:

(1) For requests made in person, a driver's license or employee identification card; and

(2) For requests made by mail, name (printed or typed. and signature) and date of birth, or the unique identifier used in the system of records.

b. If an individual cannot provide appropriate identification as required in paragraph 6.a of this appendix, or if the record requested is particularly sensitive, the FAA official responsible for the record may require the individual to sign a statement certifying his or her identity and understanding that knowingly and willfully to request or obtain any record concerning an individual from the FAA under false pretenses is a misdemeanor punishable by a fine of up to $5,000 as provided in 5 U.S.C. 552a(i)(3).

APPENDIX E TO PART 10—FEDERAL HIGHWAY ADMINISTRATION

1. *Introduction.* This appendix, with respect to the Federal Highway Administration (FHWA);

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the FHWA;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in paragraph 10.35 of these regulations.

2. *Availability for Inspection and Copy.* Places and times at which records are available for inspection and copying, and the system of records and systems managers having authority at each place.

a. *Headquarters:* The Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590. Time: 7:45 a.m.—4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Accounts Receivable DOT/FHWA-Chief General Ledger and Funds Control Section.

2. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Occupational Safety Engineer.

3. Driver Waiver File (BMCS) DOT/FHWA—Chief, Driver Requirements Branch.

4. Employee Utilization Monthly Report DOT/FHWA—Chief, Data Systems Division.

5. Investigation Case File DOT/FHWA—Chief, Investigations and Special Inquiry Division.

6. Medal of Honor File DOT/FHWA—Chief, Compliance Division.

7. Memorandum of Monthly Performance of Key Punch Operators DOT/FHWA—Chief, TCC Operation (Groups A and B).

8. Motor Carrier Accident File (BMCS) Property and Passenger—Chief, Accident Analysis Branch.

9. Occupational Safety and Health Accident Reporting System DOT/FHWA—Occupational Safety Engineer.

10. Payroll Administration DOT/FHWA—Chief, Payroll and Employee Records Section.

11. Personnel Records—(CSC Governmentwide) DOT/FHWA—Chief, Personnel Programs Division.

12. Travel Advance File DOT/FHWA—Chief, Voucher Review and Disbursement Section.

13. Travel Order (Change of Duty Station) DOT/FHWA—Chief, Voucher Review and Disbursement Section.

14. University and Industry Programs Coding and Filing Systems DOT/FHWA—

Administrative Assistant—National Highway Institute.

15. Panel for Santa Monica Demonstration Project DOT/FHWA—Chief, Urban Planning Division.

b. *Regional Offices:* Region 1—Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible System Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)—DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases DOT/FHWA—Regional Counsel.

3. Travel Advance File— DOT/FHWA Executive Officer, Region 3—Federal Highway Administration, George H. Fallon Federal Office Building, 31 Hopkins Plaza, Baltimore, Maryland 21201. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases— DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer, Region 4—Federal Highway Administration, 1720 Peachtree Road, NW., Atlanta, Georgia 30309. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA Executive Officer, Region 5—Federal Highway Administration, 18209 Dixie Highway, Homewood, Illinois 60430. Time: 7:30 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer. Region 6—Federal Highway Administration, 819 Taylor Street, Fort Worth, Texas 76102. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer, Region 7—Federal Highway Administration, 6301 Rockhill Road, Kansas City, Missouri 64131. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer. Region 8—Federal Highway Administration, P.O. Box 25246, Denver Federal Building Center, Denver, Colorado 80225. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Payroll Administration DOT/FHWA-Appropriate Finance Officer.

4. Travel Advance File—DOT/FHWA—Executive Officer. Region 9—Federal Highway Administration, 2 Embarcadero Center, P.O. Box 7616, San Francisco, California 94120 Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)-DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File DOT/FHWA—Executive Officer. Region 10—Federal Highway Administration, 222 SW. Morrison Street, Portland, Oregon 97204. Time: 8:00 a.m.-4:45 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)-DOT/FHWA—Executive Officer.

2. Travel Advance File—DOT/FHWA—Executive Officer. Region 15—Federal High-

way Administration, 1000 North Glebe Road, Arlington, Virginia 22201. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

c. Division Offices (For location and hours of duty see 49 CFR Part 7).

Systems of Records and Responsible Systems Managers:

Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Administrative Managers.

3. *Access to Records:*

a. Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records, or desiring access to such record, or to obtain a copy of such record, shall make request to the appropriate System Manager. In appropriate circumstances, oral requests are acted upon. Each request must specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

4. *Requests to Correct or Alter Records:*

a. The FHWA allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personnel records of active employees should be addressed to the responsible system managers specified in paragraph 2 above.

b. The System Managers provide written acknowledgment of the receipt of a request to amend a record to the individual within 10 days. However, if the request can be reviewed, processed and the individual notified of compliance or denial within the 10-day working period, no acknowledgment is required.

c. If the System Manager agrees with an individual's request to amend the person's record, the following steps are taken:

1. Correct the record accordingly,

2. Advise the individual in writing, and

3. If an accounting of disclosure has been made, advise all previous recipients of the record of the fact that the correction was made and the substance of the correction.

d. If the System Manager disagrees with all or any portion of the request to amend a record, he or she:

1. Proceeds as described above with respect to those portions of the record which will be amended.

2. Advises the individual of the refusal and the reason for not amending a record, indicating the name and title or position of each person responsible for the denial, and

3. Informs the individual of the right to appeal the decision not to amend a record to: Associate Administrator for Administration, Federal Highway Administration, Washington, D.C. 20590.

e. If after this review the FHWA refuses to amend the record on the individual requested, the FHWA advises the individual:

1. Of the refusal and the reason for it,

2. Of the individual's right to file a concise statement of the reasons for disagreeing with the decision of the FHWA,

3. The procedures for filing the statement of disagreement,

4. That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed, and

5. Of the individual's right to seek judicial review of the FHWA's refusal to amend a record.

f. The final FHWA determination on the individual's request is concluded within 30 days of the receipt of the appeal unless for good cause shown, the Associate Administrator for Administration extends such period. Such final administrative decision addresses all information and arguments relied upon by the individual.

g. Each application for review by FHWA must indicate that it is an appeal from a denial of a request made under the Privacy Act. The envelope in which the application is sent should be marked prominently with the words "Privacy Act".

If these requirements are not met, the time limits described in § 10.43 do not begin until the application has been identified by an employee of the FHWA as an application under the Privacy Act and has been received by the appropriate office.

h. The Associate Administrator for Administration may require the person making a request to furnish additional information, or proof of factual allegations, and may order other appropriate proceedings. His or her decision as to the availability of a record or whether to amend a record is administratively final subject to the concurrence of the DOT General Counsel or his or her delegate. However, requests for review of denials of information contained in Government-wide systems of personnel records, which includes the FHWA Personnel Records System, are handled by the Civil Service Commission in accordance with 5 CFR 294.108 and 5 CFR 297.108.

i. If the Associate Administrator for Administration also refuses to grant access or to correct the individual's record, he or she advises the individual of:

1. The reason(s) for the refusal and the names, and titles or positions of each person responsible for the denial;

2. The individual's right to file a statement of disagreement; that the statement will be made available to anyone to whom

the record is subsequently disclosed, and to prior recipients of the record (see § 10.23(d)), and

3. The right to bring suit in the District Court of the United States in the district in which the individual resides, the district in which his principal place of business is located, the district in which the record(s) is located, or the District of Columbia.

5. *Personal Identification Requirements:*

a. When a record is applied for in person, the person so applying must, unless personally known to the custodian of the records, furnish adequate identification. Such identification may consist of an employee identification card, Medicare Card, driver's license, or a similar document.

b. When a record is applied for by mail, sufficient information to identify the individual must be furnished, and a notarized statement as to the identity of the requester may be required in some instances when the record involved contains particularly sensitive information in the judgment of the systems manager.

APPENDIX F TO PART 10—FEDERAL RAILROAD ADMINISTRATION

1. *Introduction.* This appendix, with respect to the Federal Railroad Administration (FRA):

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Federal Railroad Administration;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.* Places and times at which records are available for inspection and copying and the systems of records and systems managers having authority to deny requests for disclosure at each facility.

a. Records in systems maintained in the Federal Railroad Administration are available at the Alaska Railroad, Anchorage, Alaska 99510, 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Alaska Railroad Examination of Operating Personnel; DOT/FRA Operations Officer (System Manager).

2. Alaska Railroad Personnel and Pay Management Information System; DOT/FRA—General Manager (System Manager).

3. Alaska Railroad Security and Freight Claims Investigatory Files; DOT/FRA—Chief, Security and Claims Office (Systems Manager).

b. *Places:* The Alaska Railroad, Anchorage, Alaska 99510. Hours: 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Application for (Vehicle) Operator's Identification Card; DOT/FRA—Director, Office of Administrative Operations (System Manager).

2. Confidential Statement of Employment and Financial Interest; DOT/FRA—Chief Counsel, Office of the Chief Counsel (System Manager).

3. Employee Travel Records; DOT/FRA—Accounting Officer, Accounting Division (System Manager).

4. Occupational Safety and Health Reporting System; DOT/FRA—FRA Safety Manager, Office of Administrative Operations (System Manager).

5. Office of Safety Past Employees Files; DOT/FRA—Deputy Associate Administrator for Safety (System Manager).

6. Personnel and Pay Management Information Systems; DOT/FRA—Director, Office of Personnel and Training (System Manager).

7. Travel Advance Records; DOT/FRA—Director, Office of Administrative Operations (System Manager).

8. Work Measurement System; DOT/FRA—Director, Office of Management Systems.

c. *Places: Regional Offices as follows:*

Region 2, Federal Railroad Administration, Philadelphia, Pa. 19106.

Region 3, Federal Railroad Administration, College Park, Ga. 30337.

Region 4, Federal Railroad Administration, Chicago, Illinois 60605.

Region 5, Federal Railroad Administration, Ft. Worth, Texas 76102.

Region 6, Federal Railroad Administration, Portland, Oregon 97204.

Region 7, Federal Railroad Administration, San Francisco, California 94102.

Region 8, Federal Railroad Administration, Kansas City, Missouri 64106

Hours: 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers at each Region:

Regional Personnel Convenience Files; DOT/FRA—Regional Directors (Systems Manager)

d. *Place: Transportation Test Center* (TTC) Pueblo, Colorado 81001. Hours: 9:00 a.m.-4:00 p.m.

System of Records and Responsible System Manager:

Transportation Test Center Employee Service Record File—Director, TTC (System Manager)

Transportation Test Center Cost Tracking System—Director TTC (System Manager)

3. *Access to Records.*

a. Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such a record, shall make his request in writing to the appropriate official listed as responsible system manager in this appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

b. FRA allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personal records of active employees should be addressed to the responsible system managers specified in 2.3A-D.

c. The system managers provide written acknowledgment of the receipt of a request to amend a record to the individual within ten days. However, if the request can be reviewed, processed and the individual notified of compliance or denial within the ten-day working period, no acknowledgment is required.

d. If FRA agrees with an individual's request to amend the person's record, the following steps are taken:

1. Advises the individual in writing;
2. Corrects the record accordingly; and
3. If a prior disclosure has been made, advises all previous recipients of the record of the correction and its substance.

e. If FRA, after an initial review by the system manager of a request to amend a personal record, disagrees with all or any portion of it, FRA:

1. Advises the individual of refusal and the reasons for it;
2. Informs the individual of procedures to request a further review;

f. If an individual disagrees with the initial determination, the individual may file a request for a further review of that determination. The request for a review should be addressed to:

Attn: Privacy Act of 1974, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590.

g. If after this review FRA refuses to amend the record as the individual requested, FRA advises the individual:

1. Of refusal and the reasons for it;
2. Of the individual's right to file a concise statement of the reasons for disagreeing with the decision of the Administration;
3. The procedures for filing the statement of disagreement;
4. That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed;
5. Of the individual's right to seek judicial review of the refusal to amend a record.

h. The final FRA determination on the individual's request is concluded within thirty (30) working days unless the FRA Administrator determines that a fair and equitable review cannot be completed in that timeframe. If additional time is required, the individual is informed in writing of reasons for the delay and of the estimated date on which the review is expected to be completed.

4. *Procedures for Establishing Indentity of Individual Making a Request:*

a. Disclosure of personnel records requires that the individual produce an identification card: employee identification, annuitant identification, Medicare cards, or driver's license are examples. For records disclosed by mail, FRA requires identifying information to locate the record, i.e., employee identification number, name, date of birth or social security number. A comparison of the signature of the requester and those in the record is used to determine identity.

b. If an individual can provide no suitable documents for identification, FRA requires a signed statement asserting identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000 under 5 U.S.C. 552a(i)(3).

APPENDIX G TO PART 10—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

1. *Introduction.* This appendix, with respect to the National Highway Traffic Safety Administration:

a. Describes the places and times at which records will be available for inspection and copying;

b. Indicates the systems of records maintained in the National Highway Traffic Safety Administration;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.* Records of the National Highway Traffic Safety Administration, hereafter referred to as NHTSA, are located at NHTSA headquarters, Washington, D.C., and at regional office locations, both described below. Records created, collected, maintained and used in various demonstration and research projects as contract requirements of NHTSA are located at various points in the several States and the Commonwealth of Puerto Rico.

a. All NHTSA Headquarters offices are open from 7:45 A.M. to 4:15 P.M., each day except Saturdays, Sundays, and Federal legal holidays. The main headquarters Office is located at 400 Seventh Street SW., Washington, D.C. 20590. The Office of Vehicle Safety Compliance, Enforcement Programs; the National Driver Register, Traffic Safety Programs, and the Office of Research and Development are located at the Trans Point Building, 2100 2nd Street SW., Washington, D.C. 20590.

b. NHTSA Regional offices are located at the following addresses and are open during the indicated hours each day, except for Saturdays, Sundays, and Federal legal holidays:

(1) Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 55 Broadway, Cambridge, Massachusetts 02142 (7:45 A.M.-4:15 P.M.).

(2) Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 222 Mamaroneck Avenue (Room 204), White Plains, New York 10601 (7:45 A.M.-4:15 P.M.).

(3) Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Airport Plaza Building, 6701 Elkridge Landing Road, Linthicum, Maryland 21090 (8:00 A.M.-4:30 P.M.).

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Suite 501, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309 (7:45 A.M.-4:15 P.M.).

(5) Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Suite 214, Executive Plaza, 1010 Dixie Highway, Chicago Heights, Illinois 60411 (8:00 A.M.-4:30 P.M.).

(6) Region VI (Arkanasas, Louisiana, New Mexico, Oklahoma, Texas), 819 Taylor Street, Room 11A26 Fort Worth, Texas 76102 (8:00 A.M.-4:30 P.M.).

(7) Region VII (Iowa, Kansas, Missouri, Nebraska), 6301 Rockhill Road, Kansas City, Missouri 64111 (7:45 A.M.-4:15 P.M.).

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 330 South Garrison Street, Lakewood, Colorado 80226 (7:45 A.M.-4:15 P.M.).

(9) Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Suite 610, Two Embarcadero Center, San Francisco, California 94111 (7:45 A.M.-4:15 P.M.).

(10) Region X (Alaska, Idaho, Oregon, Washington), 3140 Federal Building, 915 Second Avenue, Seattle, Washington 98174 (7:45 A.M.-4:15 P.M.).

c. NHTSA demonstration and research project records may be created, collected, maintained, and used for the purposes of NHTSA contract requirements. These records are maintained at various points in the several States and the Commonwealth of Puerto Rico. Since these project contractors only act as agents for NHTSA, and to prevent unauthorized dsclosure of information that may be subject to the provisions of the Privacy Act of 1974, management of the systems has been retained by appropriate of cials of NHTSA. Access to the published sy tems may be obtained by correspondi with the systems manager indicated for th system of records found in the citations paragarph 3 of this appendix. Appropria personal identification must be furnished accordance with paragraph 4. These of cials should be notified of any inaccuracy the record and, also, are responsible for co sidering requests for correction or alteratio of the record.

3. *Systems of Records.* A list of NHTS systems of records pertaining to the Privac Act indicating the geographic locations an the responsible systems managers has bee published in the FEDERAL REGISTER and a pears as follows: Vol. 42, No. 181, Septemb 19, 1977, beginning on page 47099.

4. *Access to Records.*

a. Individuals desiring to determin whether records pertaining to them are co tained in systems of records covered by thi appendix or desiring access to records co ered by this appendix, or to obtain copies o such records, shall make written request providing appropriate identification of th system and proof of their identity in th same manner as former employees describe in 4.c below. When an individual is not capa ble of personally providing the required in formation, a second party request may b honored if a duly attested authorization power of attorney, or appropriate cour order is submitted with the request.

b. Decision to release or deny requested records is made by the system manager, identified in the citations of paragraph 3 of this appendix, within ten working days of the receipt of the request. A person seeking review of a denial of the disclosure of record may appeal to the NHTSA Associate Administrator for Administration, 400 Seventh Street SW., Washington, D.C. 20590, preferably within 180 days of the initial denial. Decision on the request for review is made in writing within 30 working days from the receipt of the request for reconsideration of disclosure. For additional details see sections 10.45 and 10.51 of these rules.

c. Employees and former employees of NHTSA may obtain access to and consideration of the amendment of their records by providing a current Department of Transportation (DOT) identification card (Form D-1600.1.9), a DOT retired employee identification card (Form D-1680.2), Medicare card, attested signed request, or such other identification that may prove the validity of their claims.

d. Since nearly all NHTSA systems of records are maintained on electronic data processing equipment, it may require up to 48 hours to obtain individual records due to computer scheduling requirements. It is in the interest of the individual, therefore, to request information in writing rather than in person.

5. *Requests to Correct or Alter Records.*

a. Individuals may request correction or alteration of records pertaining to them by addressing such requests to the system managers or the NHTSA Privacy Act Coordinator, the addresses of whom are contained in the citation of paragraph 3 of this appendix.

b. Since the records of the National Driver Register merely contain partial records of the State's motor vehicle records, they are susceptible to correction or alteration only to the extent that such records are at variance with the State records. Persons seeking to correct their State motor vehicle records should address requests to their respective States' motor vehicle licensing authorities.

c. The system manager, in accordance with 49 CFR 10.41, provides written acknowledgment of the receipt of a request to amend a record to the individual within ten working days. If the request can be reviewed, processed, and the individual notified of compliance or denial of the request within the ten working day period, no acknowledgment is required.

d. When decision is made by the system manager to comply with an individual's request to amend the person's record, the following steps are taken within 30 working days from the date of acknowledgment of the request:

(1) Advises the individual of the decision in writing;

(2) Corrects the record accordingly; and

(3) Advises all previous recipients of the record, if an accounting of disclosure has been made, of the correction.

e. When decision is made, after initial review by the system manager of a request to amend a personal record, to disagree with all or any portion of the requested amendment, the following steps are taken within 30 working days from the date of acknowledgment of the request.

(1) Advises the individual of refusal and the reasons therefor; and

(2) Informs the individual of the procedures for appeal to the NHTSA Administrator for further review.

f. If the individual disagrees with the initial determination of the system manager, the individual may file a request for further review of that determination. This request for review should be addressed to the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

g. If after review the Administrator agrees to the amendment of the record, the procedures of subparagraph 5.d of this appendix are followed. If amendment of the record is refused as requested by the individual, the individual is advised:

(1) Of the refusal and reasons therefore, and the names and titles of positions of each person responsible for the determination;

(2) Of the individual's right to file, together with the appropriate procedures, a concise statement of the reasons for disagreeing with the decision of the Administrator;

(3) Of the fact that the statement which is filed by the requester is made available to prior recipients and anyone to whom the record is subsequently disclosed; and

(4) Of the individual's right to seek judicial review of the administrator's refusal to amend a record.

h. The final determination to refuse an individual's request for amendment of a record is concluded within 30 working days after the receipt of the appeal to the Administrator. If a fair and equitable review cannot be completed by the stipulated time, the Administrator informs the individual in writing of the reasons for delay and provides an estimated date on which completion of the review is expected.

6. *Personal Identification Requirements.* The NHTSA does not demand any personal identification beyond that specified by § 10.35 of this part.

APPENDIX H TO PART 10—URBAN MASS TRANSPORTATION ADMINISTRATION

1. *Introduction.* This appendix, with respect to the Urban Mass Transportation Administration (UMTA):

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Urban Mass Transportation Administration;

c. Identifies the officials having authority to deny requests for access for records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in paragraph 1035 of these regulations.

2. *Availability for Inspection and Copying.* In accordance with title 49, part 10, Subpart A, Section 10.1, dealing with the maintenance of an access to records pertaining to individuals under the Privacy Act of 1974 (Pub. L. 93-579), the following places and times at which individual's records are available for inspection and copying, and the titles of the officials who are reponsible system managers are submitted.

a. Regional Offices as follows:

(1) Region I, Urban Mass Transportation Administration, Cambridge, MA 02142;

(2) Region II, Urban Mass Transportation Administration, New York, NY 10007;

(3) Region III, Urban Mass Transportation Administration, Philadelphia, PA 19106;

(4) Region IV, Urban Mass Transportation Administration, Atlanta, GA 30309;

(5) Region V, Urban Mass Transportation Administration, Chicago, IL 60606;

(6) Region VI, Urban Mass Transportation Administration, Ft. Worth, TX 76102;

(7) Region VII, Urban Mass Transportation Administration, Kansas City, MO 64131;

(8) Region VIII, Urban Mass Transportation Administration, Denver CO 80202;

(9) Region IX, Urban Mass Transportation Administration, San Francisco, CA 94111; and

(10) Region X, Urban Mass Transportation Administration, Seattle, WA 98174.

b. Hours: 8:30 A.M. to 5 P.M., local time.

c. System of Records: Regional Personnel Convenience Files at each location.

d. System Managers: Regional Directors or Chiefs are System Managers

e. Headquarters: Urban Mass Transportation Administration, Washington Headquarters, Washington, D.C. 20590; Hours: 8:30 A.M. to 5 P.M.

3. *Systems of Records.*

a. Confidential Statement of Employment and Financial Interest—DOT/UMTA, Chief Counsel, Office of the Chief Counsel;

b. Occupational Safety and Health Reporting System, Director of Personnel Division;

c. Litigation and Claims File—Chief Counsel, Office of Chief Counsel;

d. Grant Applicants List, Director, Grant Management Division;

e. Contract Information System, Director, Procurement Division;

f. Unsolicited Research and Development Grants, Director, Grant Management Division;

g. Complaints of Discrimination, Director, Office of Civil Rights;

h. Employee Travel Vouchers, Chief, Accounting Branch;

i. Accounts Receivable, Chief, Accounting Branch;

j. Equal Employment Opportunity, Minority/Female Statistical Reporting System, Director, Office of Civil Rights;

k. Minority Recruitment File, Director, Office of Civil Rights;

l. UMTA Sponsored Reports—Authors File, Director, Office of Transit Management;

m. Blood Donors File, Director, Administrative Services Division;

n. Approved Grants, Director, Administrative Services Division;

o. Closed-Out Grants, Director, Administrative Services Division; and

p. Docket DOT/UMTA, Chief Counsel, Office of Chief Counsel.

4. *Access to Records.* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such a record shall make request in writing to the official specified in paragraph 1 of this appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter Records.*

a. The Administration allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personal records of active employees should be addressed to the responsible system manager specified in paragraph 1.

b. The system manager provides a written acknowledment of the receipt of a request to amend a record to the individual within ten days. However, if the request can be reviewed and processed and the individual notified of compliance or denial within the ten-day working period, no separate acknowledgment is required.

c. If UMTA agrees with an individual's request to amend the person's record, the following steps are taken:

(1) Advises the individual in writing;

(2) Corrects the record accordingly; and

(3) Advises all previous recipients of the record which was corrected of the correction and its substance.

d. If UMTA, after an initial review by the system manager of a request to amend a personal record, disagrees with all or any portion of it, it:

(1) Advises the individual of refusal and the reasons for it; and

(2) Informs the individual of procedures to request a further review.

e. If an individual disagrees with the initial determination, the individual may file a request for a further review of that determination. This request for a review should be addressed to: Privacy Act Officer, UAD-60, 400 Seventh Street SW., Washington, D.C. 20590.

f. If after this review UMTA refuses to amend the record as the individual requested, UMTA advises the individual:

(1) Of refusal and the reasons for it;

(2) Of the individual's right to file a concise statement of the reasons for disagreeing with the decision;

(3) The procedures for filing the statement of disagreement;

(4) That the statement which is filed is made available to anyone to whom the record is subsequently disclosed; and

(5) Of the individual's right to seek judicial review of the Administration's refusal to amend a record.

g. The final determination on the individual's request is concluded within 30 working days unless the UMTA Administrator determines that a fair and equitable review cannot be completed in that period. If additional time is required, the individual is informed in writing of reasons for the delay and of the estimated date on which the review is expected to be completed.

h. For personnel-related records final Civil Service Commission determination may apply within 30 working days following the procedures explained above.

6. *Personal Identification Requirements.*

a. Disclosure of personal records requires that the individual produce an identification card; employee identification, annuitant identification, Medicare card, and driver's license are examples. For records disclosed by mail, UMTA requires identifying information to locate the record, *i.e.*, employee identification number, name, date of birth, or social security number. A comparison of the signature of the requester and those in the record is used to determine identity.

b. If an individual can provide no suitable documents for identification, UMTA requires a signed statement asserting identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000 under citation 3(i)3 of the Privacy Act.

APPENDIX I TO PART 10—SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

1. *Introduction.* This appendix, with respect to the Saint Lawrence Seaway Development Corporation:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.*

a. Place and time for records inspection and copying: Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662; Massena Office: 9:00 a.m.-4:00 p.m.

b. Systems of records located at each facility: *Administration Building:* Claimants under Federal Tort Claims Act, Data Automation Program Records, Employees' Compensation Records, Emergency Operating Records (Vital Records).

c. Official having authority to deny requests for disclosure of records under this part:

Resident Manager, Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662.

3. *Systems of Records:* A complete listing of the systems of records maintained by the Saint Lawrence Seaway Development Corporation has been published in the FEDERAL REGISTER as follows: September 19, 1977, pages 47138-47140.

4. *Access to Records:* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such record, shall make request in writing to the address provided in Section 2 of this appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter a Record:*

a. Any person who desires to have his or her own record corrected shall submit a written request.

b. Only the individual to whom the record pertains may make the written request and it shall be signed by that person.

c. Request should state the reasons that the record should be corrected and that the request is made pursuant to the Privacy Act; alternatively the requester may mark "Privacy Act Amendment Request" on the envelope in which the request is submitted.

d. Requests for correction of records shall be submitted to the Personnel Officer, Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662.

6. *Personal Identification Requirements:* Refer to § 10.35 for normal requirements. In those cases involving mail requests for sensitive records, *i.e.*—medical records, the requester's signature shall be notarized.

APPENDIX J TO PART 10—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

The Research and Special Programs Administration (RSPA) will operate under the general rules of part 10 (49 CFR part 10) until specific procedures are deemed necessary for the RSPA.

PART 17—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF TRANSPORTATION PROGRAMS AND ACTIVITIES

Sec.
17.1 What is the purpose of these regulations?
17.2 What definitions apply to these regulations?
17.3 What programs and activities of the Department are subject to these regulations?
17.4 [Reserved]
17.5 What is the Secretary's obligation with respect to Federal interagency coordination?
17.6 What procedures apply to the selection of programs and activities under these regulations?
17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
17.8 How does the secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?
17.9 How does the Secretary receive and respond to comments?
17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
17.11 What are the Secretary's obligations in interstate situations?
17.12 How may a state simplify, consolidate, or substitute federally required state plans?
17.13 May the Secretary waive any provision of these regulations?

AUTHORITY: Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887): sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29272, June 24, 1983, unless otherwise noted

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, December 23, 1982, 48 FR 17101, April 21, 1983, and 48 FR 29096, June 24, 1983.

§ 17.1 What is the purpose of these regulations?

(a) The regulation in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 17.2 What definitions apply to these regulations?

"*Department*" means the U.S. Department of Transportation.

"*Order*" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"*Secretary*" means the Secretary of the U.S. Department of Transportation or an official or employee of the Department acting for the Secretary under a delegation of authority.

"*State*" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marians Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 17.3 What programs and activities of the Department are subject to these regulations?

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 17.4 [Reserved]

§ 17.5 What is the Secretary's obligation with respect to Federal interagency coordination?

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 17.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 17.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with elected local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs, and activities, after the Secretary is notified of its selections.

§ 17.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) For those programs and activities covered by a state process under § 17.6, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and,

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

§ 17.8 How does the Secretary provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Secretary gives state processes or state, areawide, regional and local officials and entities at least:

(1) [Reserved]

(2) 60 days from the date established by the Secretary to comment on proposed direct federal development or federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 17.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedures in § 17.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 17.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local offficials and entities may submit comments either to the applicant or to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 17.10 of this part.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 17.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Department by a commenting party.

§ 17.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision, in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 17.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 17.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 17.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 17.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 17.13 May the Secretary waive any provision of these regulations?

In an emergency, the Secretary may waive any provision of these regulations.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
18.1 Purpose and scope of this part.
18.2 Scope of subpart.
18.3 Definitions.
18.4 Applicability.
18.5 Effect on other issuances.
18.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

18.10 Forms for applying for grants.
18.11 State plans.
18.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

18.20 Standards for financial management systems.
18.21 Payment.
18.22 Allowable costs.
18.23 Period of availability of funds.
18.24 Matching or cost sharing.
18.25 Program income.
18.26 Non-Federal audits.

CHANGES, PROPERTY, AND SUBAWARDS

18.30 Changes.
18.31 Real property.
18.32 Equipment.
18.33 Supplies.
18.34 Copyrights.
18.35 Subawards to debarred and suspended parties.
18.36 Procurement.
18.37 Subgrants.

REPORTS, RECORDS RETENTION, AND ENFORCEMENT

18.40 Monitoring and reporting program performance.
Sec.
18.41 Financial reporting.
18.42 Retention and access requirements for records.
18.43 Enforcememt.
18.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

18.50 Closeout.
18.51 Later disallowances and adjustments.
18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

AUTHORITY: 49 U.S.C. 322(a).

SOURCE: 53 FR 8086 and 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20198, May 29, 1987, and 53 FR 8028, March 11, 1988.

Subpart A—General

§ 18.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 18.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 18.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "equipment" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 18.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, excep where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 18.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 18.4(a) (3) through (8) are subject to subpart E.

§ 18.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 18.6.

§ 18.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 18.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR part 630, subpart B, 23 CFR part 420, subpart A, and 49 CFR part 450.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will

be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 18.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 18.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 18.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in Sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 18.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 18.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 18.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, para-

graphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party inkind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 18.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8086, Mar. 11, 1988]

§ 18.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 18.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 18.31 and 18.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under Section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

§ 18.26 Non-Federal audits.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and

services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 18.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 18.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 18.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This ap-

proval requirement is in addition to the approval requirements of § 18.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 18.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 18.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

§ 18.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 18.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 18.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 18.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 18.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 18.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 18.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest,

real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A pro-

testor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 18.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 18.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or sub

grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

§ 18.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 18.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 18.10;

(2) Section 18.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 18.21; and

(4) Section 18.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 18.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

§ 18.41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 18.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transaction Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transaction Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the

end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 18.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 18.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 18.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 18.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 18.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 18.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 18.41(b)(2).

(f) Notwithstanding the provisions of paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

[53 FR 8086 and 8087, Mar. 11, 1988, as amended at 53 FR 8087, Mar. 11, 1988]

§ 18.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 18.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 18.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 18.35).

§ 18.44 Termination for convenience.

Except as provided in § 18.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 18.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 18.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 18.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 18.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 18.42;

(d) Property management requirements in §§ 18.31 and 18.32; and

(e) Audit requirements in § 18.26.

§ 18.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements [Reserved]

PART 20—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.

20.100 Conditions on use of funds.
20.105 Definitions.
20.110 Certification and disclosure.

Subpart B—Activities by Own Employees

20.200 Agency and legislative liaison.
20.205 Professional and technical services.
20.210 Reporting.

Subpart C—Activities by Other than Own Employees

20.300 Professional and technical services.

Subpart D—Penalties and Enforcement

20.400 Penalties.
20.405 Penalty procedures.
20.410 Enforcement.

Subpart E—Exemptions

20.500 Secretary of Defense.

Subpart F—Agency Reports

20.600 Semi-annual compilation.
20.605 Inspector General report.
APPENDIX A TO PART 20—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 20—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Sec. 319, Public Law 101-121 (31 U.S.C. 1352); 49 U.S.C. 322(a).

SOURCE: 55 FR 6737 and 6756, Feb. 26, 1990 (interim).

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 20.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 20.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 20.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B—Activities by Own Employees

§ 20.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 20.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 20.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 20.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over other are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 20.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 20.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 20.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 20.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 20.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 20.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 20.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 20.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 20.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 20.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 20—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete

and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

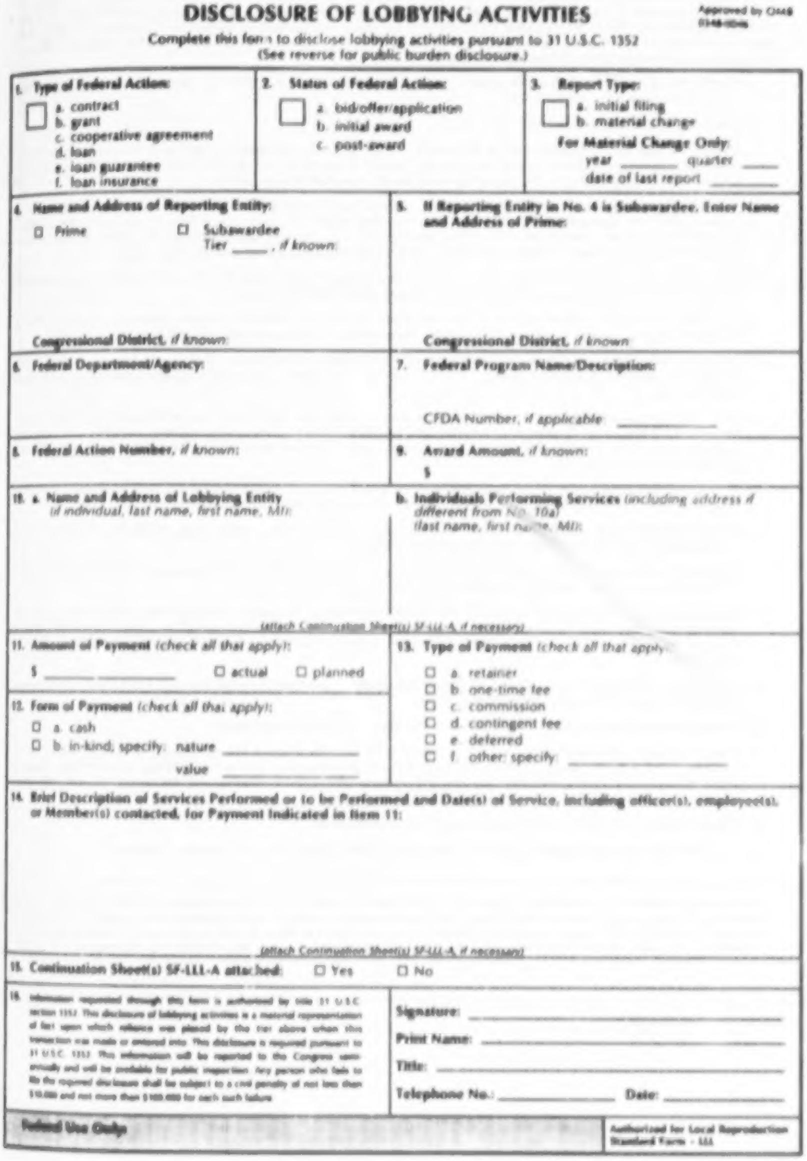
Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part 20—Disclosure Form to Report Lobbying



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _______ quarter _____
date of last report _________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* ____________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _______________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _______________
value _______________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _______________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ____________________
Print Name: ____________________
Title: ____________________
Telephone No.: __________ **Date:** __________

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: ______________________ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
21.1 Purpose.
21.3 Application of this part.
21.5 Discrimination prohibited.
21.7 Assurances required.
21.9 Compliance information.
21.11 Conduct of investigations.
21.13 Procedure for effecting compliance.
21.15 Hearings.
21.17 Decisions and notices.
21.19 Judicial review.
21.21 Effect on other regulations, forms, and instructions.
21.23 Definitions.
APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES
APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT
APPENDIX C TO PART 21—APPLICATION OF PART 21 TO CERTAIN FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF TRANSPORTATION

AUTHORITY: Sec. 602, 42 U.S.C. 2000d-1.

SOURCE: 35 FR 10080, June 18, 1970, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

§ 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs and activities listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 21.5(c).

The fact that a program or activity is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 21.5 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other

arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain programs of the Department of Transportation are contained in Appendix C of this part.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no

person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

§ 21.9 Compliance information.

(a) *Cooperation and assistance.* The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.13 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 21.7.* If an applicant fails or refuses to furnish an assurance required under § 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to § 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to § 21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 21.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5, United States Code, or detailed under section 3344 of Title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 21.17.

§ 21.17 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 21.21 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

§ 21.23 Definitions.

Unless the context requires otherwise, as used in this part:

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as

one of its purposes the provision of assistance.

(d) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) "Recipient" may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) "Secretary" means the Secretary of Transportation or, except in § 21.17 (e), any person to whom he has delegated his authority in the matter concerned.

APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 *et seq.*).

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*).

3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).

4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (*o*)).

5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).

7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).

9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

11. Use of U.S. land acquired for public airports under:

a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).

13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).

14. Use of grants made in connection with Urban Mass Transportation Research and

Demonstration Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).

15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).

16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).

17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).

18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 *et seq.*).

APPENDIX C TO PART 21—APPLICATION OF PART 21 TO CERTAIN FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF TRANSPORTATION

Nondiscrimination on Federally Assisted Projects

(a) *Examples.* The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) *Federal Aviation Administration.* (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping) than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) *Federal Highway Administration.* (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction

planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency or service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator*—(1) *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS

Subpart A—General

Sec.

23.1 Purpose.
23.3 Applicability.
23.5 Definitions.
23.7 Discrimination prohibited.

Sec.

Subpart B—[Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

23.41 General.
23.43 General requirements for recipients.
23.45 Required MBE program components.
23.47 Counting MBE participation toward meeting MBE goals.
23.49 Maintenance of records and reports.
23.51 Certification of the eligibility of minority business enterprises.
23.53 Eligibility standards.
23.55 Appeals of denials of certification as an MBE.

Subpart D—Implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982

23.61 Purpose.
23.62 Definitions.
23.63 Applicability.
23.64 Submission of overall goals.
23.65 Content of justification.
23.66 Approval and disapproval of overall goals.
23.67 Special provision for transit vehicle manufacturers.
23.68 Compliance.
23.69 Challenge procedure.
APPENDIX A—SECTION-BY-SECTION ANALYSIS
APPENDIX B—DETERMINATIONS OF BUSINESS SIZE
APPENDIX C—GUIDANCE FOR MAKING DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE
APPENDIX D—JUSTIFICATION FOR REQUESTS FOR APPROVAL OF OVERALL GOALS OF LESS THAN TEN PERCENT

Subpart E—Compliance and Enforcement

23.73 Complaints.
23.75 Compliance reviews of recipients.
23.81 Conciliation procedures for financial assistance programs.
23.83 Enforcement proceedings for financial assistance programs.
23.85 Emergency enforcement procedure.
23.87 Suspension and debarment; referral to the Department of Justice.
SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY
SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

AUTHORITY: Sec. 905 of the Regulatory Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987; sec. 19 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1615); sec. 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17); sec. 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223); Title 23 of the U.S. Code (relating to highways and traffic safety, particularly sec. 324 thereof); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); Executive Order 12265; Executive Order 12138.

SOURCE: 45 FR 21184, Mar. 31, 1980, unless otherwise noted.

Subpart A—General

§ 23.1 Purpose.

(a) The purpose of this part is to carry out the Department of Transportation's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women, (MBEs) in Department of Transportation programs. This includes assisting MBEs throughout the life of contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*); and Title 23 of the U.S. Code (relating to highways and highway safety). This regulation supersedes all DOT regulations issued previously under these authorities, insofar as such regulations affect minority business enterprise matters in DOT financial assistance programs.

§ 23.2 Applicability.

This part applies to any DOT program through which funds are made available to members of the public for accomplishing DOT's purposes. Contracts and subcontracts which are to be performed entirely outside the United States, its possessions, Puert

Rico, and the North Mariana Islands, are exempted from this part.

§ 23.5 Definitions.

"*Affirmative action*" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the Department.

"*Applicant*" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and "*application*" means such an application, request, or plan.

"*Compliance*" means the condition existing when a recipient or contractor has met and implemented the requirements of this part.

"*Contract*" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

"*Contractor*" means one who participates, through a contract or subcontract, in any program covered by this part, and includes lessees.

"*Department*" or "*DOT*" means the Department of Transportation, including its operating elements.

"*DOT-assisted contract*" means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee.

"*DOT financial assistance*" means financial aid provided by the Department or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

"*Departmental element*" means the following parts of DOT:

(a) The Office of the Secretary (OST);

(b) The Federal Aviation Administration (FAA);

(c) The United States Coast Guard (USCG);

(d) The Federal Highway Administration (FHWA);

(e) The Federal Railroad Administration (FRA);

(f) The National Highway Traffic Safety Administration (NHTSA);

(g) The Urban Mass Transportation Administration (UMTA);

(h) The St. Lawrence Seaway Development Corporation (SLSDC); and

(i) The Research and Special Programs Administration (RSPA).

"*Joint venture*" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

"*Lessee*" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

"*Minority*" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(e) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

best copy available

pages tightly bound

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

"*Minority business enterprise*" or "*MBE*" means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

"*MBE coordinator*" means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

"*Noncompliance*" means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

"*Primary recipient*" is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

"*Program*" means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

"*Recipient*" means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.

"*Secretary*" means the Secretary of transportation or any person whom he/she has designated to act for him/her.

"*Set-aside*" means a technique which limits consideration of bids or proposals to those submitted by MBEs.

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 60459, Dec. 10, 1981]

§ 23.7 Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this part, on the grounds of race, color, national origin, or sex.

Subpart B—[Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

§ 23.41 General.

(a) *Responsibilities of applicants and recipients.* (1) All applicants and recipients shall follow the requirements of § 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set forth in § 23.45 (e) through (i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of $250,000, exclusive of transit vehicle purchases, under sections, 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems.

(ii) Applicants for planning funds in excess of $100,000 under section 6, 8, 9 or 9A of the Urban Mass Transportation Act of 1964, as amended.

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(iv) Applicants for funds in excess of $250,000 awarded by the Federal Aviation Administration to general aviation airports;

(v) Applicants for funds in excess of $400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of $75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing all the elements set forth in § 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal-aid highway program funds;

(ii) Applicants for funds in excess of $500,000, exclusive of transit vehicle purchases, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems;

(iii) Applicants for planning funds in excess of $200,000 under section 6, 8, 9 and 9A of the Urban Mass Transportation Act of 1964, as amended.

(iv) Applicants for funds in excess of $500,000 awarded by the Federal Aviation Administration to large, medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the U.S. Railway Association.

(b) *Approval requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE programs.* (1) Applicants meeting the criteria set forth in paragraphs (a)(2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit vehicle manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim.

[45 FR 21184, Mar. 31, 1980, as amended at 48 FR 33444, July 21, 1983]

§ 23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a) (1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.

(1) "*Policy.* It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement."

(2) "*MBE Obligation.* (i) The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

(b) Each DOT financial assistance agreement shall include the following: "If as a condition of assistance the recipient has submitted and the Department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program the Department shall impose such sanctions as noted in 49 CFR Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance."

(c) The recipient shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in paragraph (a) of this section shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(d) Recipients shall take action concerning lessees as follows:

(1) Recipients shall not exclude MBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-MBEs for the operation of major transportation-related activities or major activities for the provision of goods and services to the facility or to the public on the facility.

(2) Recipients required to submit affirmative action programs under § 23.41 (a)(2) or (a)(3) that have business opportunities for lessees shall submit to the Department for approval with their programs overall goals for the participation as lessees of firms owned and controlled by minorities and firms owned and controlled by women. These goals shall be for a specified period of time and shall be based on the factors listed in § 23.45(g)(5). Recipients shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual MBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the recipient shall submit new overall goals to the Department for approval. Recipients that fail to meet their goals for MBE lessees shall demonstrate to the Department in writing that they made reasonable efforts to meet the goals.

(3) Except as provided in this section, recipients are not required to include lessees in their affirmative

action programs. Lessees themselves are not subject to the requirements of this part, except for the obligation of § 23.7 to avoid discrimination against MBEs.

§ 23.45 Required MBE program components.

(a) *A policy statement, expressing a commitment to use MBEs in all aspects of contracting to the maximum extent feasible.* (1) The applicant's policymaking body (Board, Council, etc.) shall issue a policy statement, signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility and states the objectives of the program. The policy statement shall be circulated throughout the applicant's organization and to minority, female, and nonminority community and business organizations.

(b) *The designation of liaison officer, as well as such support staff as may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff.* (1) The Chief Executive Officer of the recipient shall designate an MBE liaison officer and adequate staff to administer the MBE program. The MBE liaison officer shall report directly to the Chief Executive Officer.

(2) The MBE liaison officer shall be responsible for developing, managing, and implementing the MBE program on a day-to-day basis; for carrying out technical assistance activities for MBEs; and for disseminating information on available business opportunities so that MBEs are provided an equitable opportunity to bid on the applicant's contracts.

(c) *Procedures to ensure that MBEs have an equitable opportunity to compete for contracts and subcontracts.* The recipient shall develop and use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

(1) Arranging solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation MBEs.

(2) Providing assistance to MBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

(3) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) *Opportunities for the use of banks owned and controlled by minorities or women.* (1) The recipient shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in its community and make the greatest feasible use of these banks.

(2) Recipients shall also encourage prime contractors to use the services of banks owned and controlled by minorities or women.

(e) *MBE directory.* (1) The recipient shall have available a directory or source list to facilitate identifying MBEs with capabilities relevant to general contracting requirements and to particular solicitations. The recipient shall make the directory available to bidders and proposers in their efforts to meet the MBE requirements. It shall specify which firms the Department, recipient, or the Small Business Administration has determined to be eligible MBEs in accordance with procedures set forth in this subpart. Recipients subject to the disadvantaged business enterprise program requirements of Subpart D of this part shall compile and update their directories annually. The directories shall include the addresses of listed firms.

(f) *Procedures to ascertain the eligibility of MBEs and joint ventures involving MBEs.* (1) To ensure that its MBE program benefits only firms owned and controlled by minorities or women, the recipient shall certify the eligibility of MBEs and joint ventures involving MBEs that are named by the competitors in accordance with this subpart. Recipients may, at their own discretion, accept certifications made by other DOT recipients.

(2) Recipients shall require their prime contractors to make good faith efforts to replace an MBE subcontractor that is unable to perform successfully with another MBE. The recipient

shall approve all substitutions of subcontractors before bid opening and during contract performance, in order to ensure that the substitute firms are eligible MBEs.

(3) Recipients covered by the disadvantaged business program requirements of Subpart D of this part shall, in determining whether a firm is an eligible disadvantaged business enterprise, take at least the following steps:

(i) Perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation;

(ii) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(iii) Analyze the ownership of stock in the firm, if it is a corporation;

(iv) Analyze the bonding and financial capacity of the firm;

(v) Determine the work history of the firm, including contracts it has received and work it has completed;

(vi) Obtain or compile a list of equipment owned or available to the firm and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program; and

(vii) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.

(g) *Percentage goals for the dollar value of work to be awarded to MBEs.* (1) Once the recipient has reviewed proposed contracting to identify those contracting activities which have the greatest potential for MBE participation, the recipient shall set goals that are practical and related to the potential availability of MBEs in desired areas of expertise.

(2) The applicant/recipient shall establish two types of MBE goals:

(i) Overall goals for its entire MBE program, for a specified period of time (e.g. one year), or for a specific project, (e.g. the construction of a facility); and

(ii) Contract goals on each specific prime contract with subcontracting possibilities, which the bidder or proposer must meet or exceed or demonstrate that it could not meet despite its best efforts.

(3)(i) Recipients shall submit their overall goals and a description of the methodology used in establishing them with their MBE program. When the overall goals expire, new overall goals shall be set and submitted to the Department for approval. Contract goals need not be submitted in the applicant's MBE program, but the program shall contain a description of the methodology to be used in establishing them. Contract goals may require approval by the Department prior to contract solicitation.

(ii) At the time the recipient submits its overall goals to the Department for approval, the recipient shall publish a notice announcing these goals, informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the recipient for 30 days following the date of the notice, and informing the public that the Department and the recipient will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications, and shall state that the comments are for informational purposes only.

(4) Recipients covered by the disadvantaged business enterprise program requirements of Subpart D of this part shall establish an overall goal and contract goal for firms owned and controlled by socially and economically disadvantaged individuals. Other recipients shall establish separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively.

(5) The applicant shall consider the following factors in setting overall goals:

(i) Overall goals shall be based on projection of the number and types of contracts to be awarded by the applicant and a projection of the number and types of MBEs likely to be available to compete for contracts from the recipient over the period during which the goals will be in effect.

(ii) Overall goals shall also be based on past results of the applicant's/recipient's efforts to contract with MBEs and the reasons for the high or low level of those results.

(6) The applicant/recipient shall review the overall goals at least annually. The review process shall analyze projected versus actual MBE participation during the previous year. The necessary revisions shall be made based on the analysis and submitted to the Department for approval.

(7) Goals shall be set for specific contracts based on the known availability of qualified MBEs.

(8) Recipients and contractors shall, at a minimum, seek MBEs in the same geographic area in which they seek contractors or subcontractors generally for a given solicitation. If the recipient or contractor cannot meet the goals using MBEs from this geographic area, the recipient or contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider geographic area.

(h) *A means to ensure that competitors make good faith efforts to meet MBE contract goals.* (1) For all contracts for which contract goals have been established, the recipient shall, in the solicitation, inform competitors that the apparent successful competitor will be required to submit MBE participation information to the recipient and that the award of the contract will be conditioned upon satisfaction of the requirements established by the recipient pursuant to this subsection.

(i) The apparent successful competitor's submission shall include the following information:

(A) The names and addresses of MBE firms that will participate in the contract;

(B) A description of the work each named MBE firm will perform;

(C) The dollar amount of participation by each named MBE firm.

(ii) The recipient may select the time at which it requires MBE information to be submitted. *Provided,* that the time of submission shall be before the recipient commits itself to the performance of the contract by the apparent successful competitor.

(2) If the MBE participation submitted in response to paragraph (h)(1) of this section does not meet the MBE contract goals, the apparent successful competitor shall satisfy the recipient that the competitor has made good faith efforts to meet the goals.

(i) The recipient may prescribe other requirements of equal or greater effectiveness in lieu of good faith efforts. Any recipient choosing alternative requirements shall inform the DOT office concerned by letter of the content of the requirements it has prescribed within 30 days of the effective date of this subsection. The recipient may put these alternative requirements into effect immediately and prior DOT approval of alternative requirements is not necessary.

(ii) If the Department determines that the alternative requirements are not as or more effective than the good faith efforts provisions of this subsection, the Department may require the recipient to use the good faith efforts requirements of this subsection instead of the requirements it has prescribed.

(3) Meeting MBE contract goals, making good faith efforts as provided in paragraph (h)(2) of this section, or meeting requirements established by recipients in lieu of good faith efforts, is a condition of receiving a DOT-assisted contract for which contract goals have been established.

(i) [Reserved]

(j) *A description of the methods by which the recipient will require subrecipients, contractors, and subcontractors to comply with applicable MBE requirements.* (1) The recipient shall include in its MBE program a description and the specific language of any preconditions to subgrants or contracts pertaining to the use of MBEs, including subcontracting programs, it awards with DOT funds in addition to those required by this section. It shall specify on what size and/or type of contracts and subgrants it includes such preconditions. The description shall contain a summary of the ways the recipient provides help to its subrecipients, contractors, and subcontractors in drafting and implementing their programs for using MBEs. The description shall also include the means by which the recipient enforces the requirements placed on subrecipients, contractors and subcontractors.

(2) Any MBE subcontracting programs required by the recipient in addition to those required by this section shall be submitted to the recipient by the apparent successful bidder/proposer. The bidders/proposers shall be advised in the solicitation that failure to submit the additional MBE subcontracting program shall make the bidder/proposer ineligible for award.

(k) *Procedures by which the applicant/recipient will implement MBE set-asides.* Where not prohibited by state or local law and determined by the recipient to be necessary to meet MBE goals, procedures to implement MBE set-asides shall be established. MBE set-asides shall be used only in cases where at least three MBEs with capabilities consistent with contract requirements exist so as to permit competition.

APPENDIX A TO § 23.45—GUIDANCE CONCERNING GOOD FAITH EFFORTS

To determine whether a competitor that has failed to meet MBE contract goals may receive the contract, the recipient must decide whether the efforts the competitor made to obtain MBE participation were "good faith efforts" to meet the goals. Efforts that are merely *pro forma* are not good faith efforts to meet the goals. Efforts to obtain MBE participation are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of MBE participation sufficient to meet the goals. In order to award a contract to a competitor that has failed to meet MBE contract goals, the recipient must determine that the competitor's efforts were those that, given all relevant circumstances, a competitor actively and aggressively seeking to meet the goals would make.

To assist recipients in making the required judgment, the Department has prepared a list of the kinds of efforts that contractors may make in obtaining MBE participation. It is not intended to be a mandatory checklist; the Department does not require recipients to insist that a contractor do any one, or any particular combination, of the things on the list. Nor is the list intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a contractor has made good faith efforts, it will usually be important for a recipient to look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of these efforts.

The Department offers the following list of kinds of efforts that recipients may consider:

(1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform MBEs of contracting and subcontracting opportunities;

(2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;

(3) Whether the contractor provided written notice to a reasonable number of specific MBEs that their interest in the contract was being solicited, in sufficient time to allow the MBEs to participate effectively;

(4) Whether the contractor followed up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;

(5) Whether the contractor selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting the MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);

(6) Whether the contractor provided interested MBEs with adequate information about the plans, specifications and requirements of the contract;

(7) Whether the contractor negotiated in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

(8) Whether the contractor made efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and

(9) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs.

(Title VI of the Civil Rights Act of 1964; sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; sec. 19 of the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 324; E.O. 11625; E.O. 12138)

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 23461, Apr. 27, 1981; 52 FR 39230, Oct. 21, 1987]

§ 23.47 Counting MBE participation toward meeting MBE goals.

MBE participation shall be counted toward meeting MBE goals set in accordance with this subpart as follows:

(a) Once a firm is determined to be an eligible MBE in accordance with this subpart, the total dollar value of the contract awarded to the MBE is counted toward the applicable MBE goals.

(b) The total dollar value of a contract to an MBE owned and controlled by both minority males and non-minority females is counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with an MBE owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not to both. The contractor or recipient employing the firm may choose the goal to which the contract value is applied.

(c) A recipient or contractor may count toward its MBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this subpart equal to the percentage of the ownership and controls of the MBE partner in the joint venture.

(d)(1) A recipient or contractor may count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of a contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the recipient or contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(2) Consistent with normal industry practices, an MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the recipient. The recipient's decision on the rebuttal of this presumption is subject to review by the Department.

(e)(1) A recipient or contractor may count toward its MBE, DBE or WBE goals 60 percent of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE or WBE regular dealer, and 100 percent of such expenditures to an MBE, WBE, or DBE manufacturer.

(2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor.

(3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(f) A recipient or contractor may count toward its MBE, DBE, or WBE goals the following expenditures to MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

[45 FR 21184, Mar. 31, 1980, as amended at 52 FR 39230, Oct. 21, 1987]

§ 23.49 Maintenance of records and reports.

(a) In order to monitor the progress of its MBE program the applicant/recipient shall develop a recordkeeping system which will identify and assess MBE contract awards, prime contractors' progress in achieving MBE subcontract goals, and other MBE affirmative action efforts.

(b) Specifically, the applicant/recipient shall maintain records showing:

(1) Procedures which have been adopted to comply with the requirements of this part.

(2) Awards to MBEs. These awards shall be measured against projected MBE awards and/or MBE goals. To assist in this effort, the applicant shall obtain regular reports from prime contractors on their progress in meeting contractual MBE obligations.

(3) Specific efforts to identify and award contracts to MBEs.

(c) Records shall be available upon the request of an authorized officer or employee of the government.

(d)(1) The recipient shall submit reports conforming in frequency and format to existing contract reporting requirements of the applicable Departmental element. Where no such contract reporting requirements exist, MBE reports shall be submitted quarterly.

(2) These reports shall include as a minimum:

(i) The number of contracts awarded to MBEs;

(ii) A description of the general categories of contracts awarded to MBEs;

(iii) The dollar value of contracts awarded to MBEs;

(iv) The percentage of the dollar value of all contracts awarded during this period which were awarded to MBEs; and

(v) An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

(3) The records and reports required by this section shall provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women. If the records and reports include any section 8(a) contractors that are not minorities or women, information concerning these contractors shall also be recorded and reported separately.

§ 23.51 Certification of the eligibility of minority business enterprises.

(a) To ensure that this part benefits only MBEs which are owned and controlled in both form and substance by one or more minorities or women, DOT recipients shall use Schedules A and B (reproduced at the end of this Part) to certify firms who wish to participate as MBEs in DOT under this part.

(b) Except as provided in paragraph (c) of this section, each business, including the MBE partner in a joint venture, wishing to participate as a MBE under this part in a DOT-assisted contract shall complete and submit Schedue A. Each entity wishing to participate as a joint venture MBE under this part in DOT-assisted contracts shall in addition complete and submit Schedule B. The schedule(s) shall be signed and notarized by the authorized representative of the business entity. A business seeking certification as an MBE shall submit the required schedules with its bid or proposal for transmission to the contracting agency involved.

(c) Under the following circumstances, a business seeking to participate as an MBE under this subpart need not submit schedule A or B:

(1) If a DOT recipient has established a different certification process that DOT has determined to be as or more effective than the process provided for by this section. Where such a process exists, potential MBE contractors shall submit the information required by the recipient's process.

(2) If the potential MBE contractor states in writing that it has submitted the same information to or has been certified by the DOT recipient involved, any DOT element, or another Federal agency that uses essentially the same definition and ownership and control criteria as DOT. The potential MBE contractor shall obtain the information and certification (if any) from the other agency and submit it to the recipient or cause the other agency to submit it. The recipient may rely upon such a certification. Where another agency has collected information but not made a determination concerning eligibility, the DOT recipient shall make its own determination based on the information it has obtained from the other agency.

(3) If the potential MBE contractor has been determined by the Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under section 8(a) of the Small Business Act, as amended.

§ 23.53 Eligibility standards.

(a) The following standards shall be used by recipients in determining whether a firm is owned and controlled by one or more minorities or women is and shall therefore be eligible to be certified as an MBE. Businesses aggrieved by the determination may appeal in accordance with procedures set forth in § 23.55.

(1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the recipient is not required to accept this claim if it determines the claim to be invalid.

(2) An eligible minority business enterprise under this part shall be an independent business. The ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond the *pro forma* ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by a examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE. In determining whether a potential MBE is an independent business, DOT recipients shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority firms vary from industry practice.

(3) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm.

(4) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered an MBE within the meaning of this part. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the

managers can, for the purposes of this part, be considered as controlling the business.

(5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an MBE under this part shall be held directly by minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by minority or women in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(b) In addition to the above standards, DOT recipients shall give special consideration to the following circumstances in determining eligibility under this part.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

(2) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.

(3) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE is carefully reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this part if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

(d) A joint venture is eligible to compete in an MBE set-aside under this part if the MBE partner of the joint venture meets the standards of an eligible MBE set forth above, and the MBE partner's share in the ownership, control, and management responsibilities, risks, and profits of the joint venture is at least 51 percent and the MBE partner is responsible for a clearly defined portion of the work to be performed.

(e) A business wishing to be certified as an MBE or joint venture MBE by a DOT recipient shall cooperate with the recipient in supplying additional information which may be requested in order to make a determination.

(f) Once certified, an MBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the MBE shall submit a new schedule A.

(g) Except as provided in § 23.55, the denial of a certification by the Department or a recipient shall be final, for that contract and other contracts being let by the recipient at the time of the denial of certification. MBEs and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(h) Recipients shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with Federal, state and local law.

§ 23.55 Appeals of denials of certification as an MBE.

(a) *Filing.* Any firm which believes that it has been wrongly denied certification as an MBE or joint venture under §§ 23.51 and 23.53 by the Department or a recipient of DOT financial assistance may file an appeal in writing, signed and dated, with the Department. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the Secretary. This information is not considered an appeal pursuant to this section.

(b) *Decision to investigate.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Status of certification during the investigation.* The Secretary may at his/her discretion, deny the MBE or joint venture in question eligibility to participate as an MBE DOT-assisted contracts let during the pendancy of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this should not occur.

(d) *Cooperation in investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Secretary makes one of the following determinations and informs the MBE or joint venture in writing of the reasons for the determination:

(1) The MBE or joint venture is certified; or

(2) The MBE or joint venture is not eligible to be certified and is denied eligibility to participate as an MBE in any direct or DOT-assisted contract until a new application for certification is approved by the recipient.

Subpart D—Implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982

SOURCE: 48 FR 33442, July 21, 1983, unless otherwise noted.

§ 23.61 Purpose.

(a) The purpose of this subpart is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17) and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223) so that, except to the extent the Secretary determines otherwise, not less than ten percent of the funds authorized by the Act for the programs listed in § 23.63 of this subpart is expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The ten percent level of participation for disadvantaged businesses established by section 106(c) and section 105(f) will be achieved if recipients under the programs covered by this subpart set and meet overall disadvantaged business goals of at least ten percent.

[48 FR 33442, July 21, 1983, as amended at 52 FR 39230, Oct. 21, 1987; 53 FR 18286, May 23, 1988]

§ 23.62 Definitions.

The following definitions apply to this subpart. Where these definitions are inconsistent with the definitions of § 23.5 of this part, these definitions control for all other purposes under this part.

"*Act*" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17), with respect to financial assistance programs of the FHWA and UMTA, and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223), with respect to FAA programs.

"*Disadvantaged business*" means a small business concern: (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"*Small business concern*" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation.

"*Socially and economically disadvantaged individuals*" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

(a) "*Black Americans,*" which includes persons having origins in any of the Black racial groups of Africa;

(b) "*Hispanic Americans,*" which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "*Native Americans,*" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) "*Asian-Pacific Americans,*" which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and

(e) "*Asian-Indian Americans,*" which includes persons whose origins are from India, Pakistan, and Bangladesh.

[48 FR 33442, July 21, 1983, as amended at 52 FR 39230, Oct. 21, 1987; 53 FR 18286, May 23, 1988]

§ 23.63 Applicability.

This subpart applies to all DOT fi- nancial assistance in the following cat- egories that recipients expend in DOT-assisted contracts:

(a) Federal-aid highway funds au- thorized by Title I of the Act;

(b) Urban mass transportation funds authorized by Title I or III of the Act or the Urban Mass Transportation Act of 1964, as amended; and

(c) Funds authorized by Title I, II (except section 203) or III of the Sur- face Transportation Assistance Act of 1982 (Pub. L. 97-424) and obligated on or after April 2, 1987.

(d) Funds authorized under sectior Title I of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223).

[52 FR 39231, Oct. 21, 1987, as amended a 53 FR 18286, May 23, 1988]

§ 23.64 Submission of overall goals.

(a) Each recipient of funds to which this subpart applies that is required to have an MBE program under § 23.4 of this part shall establish an overal goal for the use of disadvantaged bus nesses.

(b) Each recipient required to estab lish an overall goal shall calculate it i terms of a percentage of one of th following bases, as applicable:

(1) For recipients of Federal-ai highway funds, all such funds that th recipient will expend in DOT-assiste contracts in the forthcoming fisc year; or

(2) For recipients of urban mas transportation or airport funds, a such funds (exclusive of funds to b expended for purchases of transit v hicles) that the recipient will expen in DOT-assisted contracts in the fort coming fiscal year. In appropria cases, the UMTA or FAA Administr tor may permit recipients to expre overall goals as a percentage of fun for a particular grant, project, group of grants and/or projects.

(c) Each recipient of Federal-a highway funds, urban mass transpo tation funds, or airport funds sh submit its overall goal to FHWA UMTA or FAA, as appropriate, for a proval 60 days before the beginning the Federal fiscal year to which th goal applies. An UMTA or FAA recipient calculating its overall goal as a percentage of funds for a particular grant, project, or group of grants or projects shall submit its overall goal to UMTA or FAA at a time determined by the UMTA or FAA Administrator.

(d) Recipients submitting a goal of ten percent or more shall submit the goal under the procedures set forth in § 23.45(g) of this part.

(e) If an FHWA or UMTA or FAA recipient requests approval of an overall goal of less than ten percent, the recipient shall take the following steps in addition to those set forth in § 23.45(g) of this part:

(1) Submit with its request a justification including the elements set forth in § 23.65;

(2) Ensure that the request is signed, or concurred in, by the Governor of the state (in the case of a state transportation agency), the Mayor or other elected official(s) responsible for the operation of a mass transit agency; or, with respect to an airport sponsor, the elected official, head of the board, or other official responsible for the operation of the sponsor, and

(3) Consult with minority and general contractors' associations, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses and the adequacy of the recipient's efforts to increase the participation of such businesses. If it appears to the Administrator that the recipient has failed to consult with a relevant person or organization, the Administrator may direct the recipient to consult with that person or organization.

[48 FR 33442, July 21, 1983, as amended at 53 FR 18286, May 23, 1988]

§ 23.65 Content of justification.

An FHWA or UMTA or FAA recipient requesting approval of an overall goal of less than ten percent shall include information on the following points in its justification. Guidance concerning this information is found in Appendix D.

(a) The recipient's efforts to locate disadvantaged businesses;

(b) The recipient's efforts to make disadvantaged businesses aware of contracting opportunities;

(c) The recipient's initiatives to encourage and develop disadvantaged businesses;

(d) Legal or other barriers impeding the participation of disadvantaged businesses at at least a ten percent level in the recipient's DOT-assisted contracts, and the recipient's efforts to overcome or mitigate the effects of these barriers;

(e) The availability of disadvantaged businesses to work on the recipient's DOT-assisted contracts;

(f) The size and other characteristics of the minority population of the recipient's jurisdiction, and the relevance of these factors to the availability or potential availability of disadvantaged businesses to work on the recipient's DOT-assisted contracts; and

(g) A summary of the views and information concerning the availability of disadvantaged businesses and the adequacy of the recipient's efforts to increase the participation of such businesses provided by the persons and organizations consulted by the recipient under § 23.64(f)(3).

[48 FR 33442, July 21, 1983, as amended at 53 FR 18286, May 23, 1988]

§ 23.66 Approval and disapproval of overall goals.

(a) The Administrator reviews and approves any overall goal of ten percent or more submitted by a recipient as provided in § 23.45(g) of this part.

(b) The Administrator of the concerned Departmental element approves a requested goal of less than ten percent if he or she determines, on the basis of the recipient's justification and any other information available to the Administrator, that

(1) The recipient is making all appropriate efforts to increase disadvantaged business participation in its DOT-assisted contracts to a ten percent level; and

(2) Despite the recipient's efforts, the recipient's requested goal represents a reasonable expectation for the participation of disadvantaged businesses in its DOT-assisted contracts,

given the availability of disadvantaged businesses to work on these contracts.

(c) Before approving or disapproving a requested goal of less than ten percent, the Administrator provides the Director of the DOT Office of Small and Disadvantaged Business Utilization with an opportunity to review and comment on the request.

(d) If the Administrator does not approve the goal the recipient has requested, the Administrator, after consulting with the recipient, establishes an adjusted overall goal. The adjusted overall goal represents the Administrator's determination of a reasonable expectation for the participation of disadvantaged businesses in the recipients DOT-assisted contracts, and is based on the information provided by the recipient and/or other information available to the Administrator.

(e) The Administrator may condition the approval or establishment of any overall goal on any reasonable future action by the recipient.

§ 23.67 Special provision for transit vehicle manufacturers.

(a) Each UMTA recipient shall require that each transit vehicle manufacturer, as a condition of being authorized to bid on transit vehicle procurements in which UMTA funds participate, certify that it has complied with the requirements of this section. This requirement shall go into effect on October 1, 1983.

(b) Each manufacturer shall establish and submit for the UMTA Administrator's approval an annual percentage overall goal. The base from which the goal is calculated shall be the amount of UMTA financial assistance participating in transit vehicle contracts to be performed by the manufacturer during the fiscal year in question. Funds attributable to work performed outside the United States and its territories, possessions, and commonwealths shall be excluded from this base. The requirements and procedures of § 23.64 (d) and (e)(1) and §§ 23.65—23.66 of this subpart shall apply to transit vehicle manufacturers as they apply to recipients.

(c) The manufacturer may make the certification called for in paragraph (a) if it has submitted the goal required by paragraph (b) and the UMTA Administrator has either approved it or not disapproved it.

§ 23.68 Compliance.

(a) Compliance with the requirements of this subpart is enforced through the provisions of this section, not through the provisions of Subpart E of this part.

(b) Failure of a recipient to have an approved MBE program, including an approved overall goal, as required by § 23.64 of this subpart, is noncompliance with this subpart.

(c) If a recipient fails to meet an approved overall goal, it shall have the opportunity to explain to the Administrator of the concerned Department element why the goal could not be achieved and why meeting the goal was beyond the recipient's control.

(d)(1) If the recipient does not make such an explanation, or if the Administrator determines that the recipient's explanation does not justify the failure to meet the approved overall goal, the Administrator may direct the recipient to take appropriate remedial action. Failure to take remedial action directed by the Administrator is noncompliance with this subpart.

(2) Before the Administrator determines whether a recipient's explanation of justifies its failure to meet the approved overall goal, the Administrator gives the Director, Office of Small and Disadvantaged Business Utilization, an opportunity to review and comment on the recipient's explanation.

(e)(1) In the event of noncompliance with this subpart by a recipient of Federal-aid highway funds, the FHWA Administrator may take any action provided for in 23 CFR 1.36.

(2) In the event of noncompliance with this subpart by a recipient of funds administered by UMTA or FAA the UMTA or FAA Administrator may take appropriate enforcement action. Such action may include the suspension or termination of Federal funds or the refusal to approve projects, grants, or contracts until deficiencies are remedied.

[48 FR 33442, July 21, 1983; 48 FR 41163, Sept. 14, 1983, as amended at 53 FR 18286, May 23, 1988]

§ 23.69 Challenge procedure.

(a) Each recipient required to establish an overall goal under § 23.64 shall establish a challenge procedure consistent with this section to determine whether an individual presumed to be socially and economically disadvantaged as provided in § 23.62 is in fact socially and economically disadvantaged.

(b) The recipient's challenge procedure shall provide as follows:

(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the recipient as a disadvantaged business. The challenge shall be made in writing to the recipient.

(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and disadvantaged.

(i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b) (4), (5), and (6) of this section.

(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

(7) In making the determinations called for in paragraphs (b) (3), (5), and (6) of this section, the recipient shall use the standards set forth in Appendix C to this subpart.

(8) During the pendancy of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(c) The final determination of the recipient under paragraphs (b)(3)(i) and (b)(6) may be appealed to the Department by the adversely affected party to the proceeding under the procedures of § 23.55 of this part.

APPENDIX A—SECTION-BY-SECTION ANALYSIS

This section-by-section analysis describes the provisions of the final rule. This material is normally published in the preamble to the final rule. However, the Department believes that it may be useful to recipients, contractors, and the public to publish this information in an appendix to the final regulation. As a result, this information will be available to users of the Code of Federal Regulations as well as to persons who have access to the FEDERAL REGISTER print of the regulation.

Section 23.61 Purpose.

This section states that the purpose of Subpart D is to implement section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 and section 105(f) of the Airport and Airway Safety and Capacity Expansion Act of 1987. The rest of the section restates the text of the statute and states that the ten percent level of disadvantaged business participation established by the statute will be achieved if recipients set and meet goals of at least ten percent. The Department of Transportation is committed to carrying out section 106(c) and section 105(f) and achieving its objectives, and intends to enforce the obligations of the recipients and contractors under section 106(c) and section 105(f) and 49 CFR Part 23.

Section 23.62 Definitions.

As used in Subpart D, the word "Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 Airport and Airway Safety and Capacity Expansion Act of 1987. The definition of the term "disadvantaged business" in Subpart D is very similar to the definition of the term "minority business enterprise" used for other purposes in 49 CFR Part 23. A different term is employed in recognition of the fact that a slightly different set of individuals is eligible to own and control a disadvantaged business than is eligible to own and control a minority business enterprise. In either case, at least 51 percent of the business must be owned by one or more of the eligible individuals, and the firm's management and daily business operations must be controlled by one or more of the eligible individuals who own it. It is important to note that the business owners themselves must control the operations of the business. Absentee ownership, or titular ownership by an individual who does not take an active role in controlling the business, is not consistent with eligibility as a disadvantaged business under this regulation. In order to be an eligible disadvantaged business, a firm must meet the criteria of § 23.53 of this regulation and must be certified as 49 CFR Part 23 provides.

"Small business concern" is defined as a small business meeting the standards of section 3 of the Small Business Act and relevant regulations that implement it. These regulations are summarized in Appendix B to the subpart. It should be emphasized that any business which fails to qualify under the standards as a small concern, including a firm certified by SBA under the 8(a) program, cannot be certified as a disadvantaged business, even though it is owned and controlled by socially and economically disadvantaged individuals. Since the small business status of a firm can change over the years, we recommend that recipients make a point of reviewing periodically the small business status of firms with existing certifications periodically to make sure that they still qualify.

Congress determined, in order to ensure that the DBE program meets its objective of helping small minority businesses become self-sufficient and able to compete in the market with non-disadvantaged firms, that DBE firms should "graduate" from the program once their average annual receipts reached $14 million.

In implementing this provision, recipients should note that a firm is not "graduated" from the program, and hence no longer an eligible DBE, until its average annual gross receipts over the previous three-year period exceed $14 million. The fact that a firm exceeds $14 million in gross receipts in a single year does not necessarily result in "graduation." For example, suppose a firm has the following history:

1985—$11 million
1986—$13 million
1987—$14 million
1988—$14 million
1989—$15 million

The firm makes $14 million in 1987. However, the firm's average annual gross receipts for 1985-87 are $12.67 million, so the firm remains eligible in 1988. This hypothetical firm would remain eligible in 1989 as well, since its average annual gross receipts for 1986-88 would be $13.67 million. However, the firm's average annual gross receipts for 1987-89 would be $14.3 million. As a result, the firm would not be an eligible DBE in 1990.

It should also be pointed out the $14 million ceiling, like small business size limits under section 3 of the Small Business Act, includes revenues of "affiliates" of the firm as well as the firm itself. This is the import of the "any concern or group of concerns" language. In addition, firms still are subject to applicable lower limits on business size established by the Small Business Administration in 13 CFR Part 121. For example, if SBA regulations say that $7.5 million average gross annual revenues is the size limit for a certain type of business, that size limit, rather than the overall $14 million ceiling, determines whether the firm qualifies in terms of its size to be a DBE.

"Socially and economically disadvantaged individuals" is the term that defines the persons eligible to own and control a disadvantaged business. The term includes the following people: First, anyone found to be socially and economically disadvantaged by SBA under the 8(a) program is regarded as socially and economically disadvantaged for the purpose of DOT-assisted programs. Second, any individual who is a member of one of the designated groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian Indian-Americans or women) is rebuttably presumed to be socially and economically disadvantaged. By "rebuttably presumed," we mean that the socially and economically disadvantaged status of any individual who is a member of one of the groups is normally assumed by the recipient. With the exception of persons whose origins are from Burma and Thailand the members of these presumed groups are exactly the same persons who are considered to be minorities for purposes of the § 23.5 definition of "minority."

Individuals whose origins are from Burma and Thailand are not presumed to be socially and economically disadvantaged individuals for purposes of Subpart D. This means that firms owned and controlled by such individuals are eligible to be considered as MBEs for purposes of FRA, NHTSA and other DOT financial assistance programs but not as disadvantaged businesses for purposes of FHWA, UMTA and FAA programs (unless their owners are determined to be socially and economically disadvantaged on an individual basis). If SBA determines any additional groups to be presumptively socially and economically disadvantaged, these groups will become eligible for consideration as owners of disadvantaged businesses on the same basis as Black Americans, Hispanic Americans, and members of the other presumptive groups.

A recipient may, through its certification program, determine that individuals who are not members of any of the presumptive groups are socially and economically disadvantaged. On this basis, for example, disabled Vietnam veterans, Appalachian white males, Hasidic Jews, or any other individuals who are able to demonstrate to the recipient that they are socially and economically disadvantaged may be treated as eligible to own and control a disadvantaged business, on the same basis as a member of one of the presumptive groups. It must be emphasized that these individuals are not determined to be socially and economically disadvantaged on the basis of their group membership. Rather, the social and economic disadvantage of each must be determined on an individual, case-by-case basis. Guidance for making these determinations is found in Appendix C.

Section 23.63 Applicability.

This section provides that Subpart D applies to all DOT financial assistance in a number of categories that recipients expend "in DOT-assisted contracts." This last phrase is very important. The base from which goals are calculated is not the total amount of money which each recipient receives from FHWA or FAA or UMTA. It is the amount of money that the recipient expends in DOT-assisted contracts. Funds that the recipient does not expend in contracts (i.e., funds spent by an FHWA or FAA recipient to acquire right-of-way or otherwise acquire land or pay its own employees to supervise construction; funds used by an UMTA recipient to pay salaries of bus drivers) not part of the base from which the overall goal is calculated. Only those funds to be expended by the recipient in contracts are available to create contracting opportunities for disadvantaged businesses, so only these funds comprise the base from which goals for the use of disadvantaged businesses are calculated.

The first category of program funds to which Subpart D applies is Federal-aid highway funds authorized by Title I of the Act. The second category is urban mass transportation funds authorized by Title I (i.e., interstate transfer and substitution funds) or Title III of the Act. The third category is funds authorized by Title I, Title II (except section 203), or Title III of the Surface Transportation Assistance Act of 1982 which were obligated on or after April 2, 1987 (the enactment date of the STURAA). The provisions of Subpart D also apply to the FAA-administered airport funds authorized by the Airport and Airway Safety and Capacity Expansion Act of 1987.

Section 23.64 Submission of Overall Goals.

This section concerns the procedures for submission of overall goals to be used by recipients of funds covered by this subpart. Paragraph (a) is intended to avoid the imposition of new administrative burdens on recipients of relatively low amounts of DOT financial assistance. This paragraph provides that only those recipients who are required to have MBE programs under 49 CFR Part 23 must comply with the goal setting requirements of Subpart D. This includes all state transportation agencies who receive FHWA funds and UMTA recipients who receive at least $250,000 in UMTA capital and operating funds, exclusive of funds for transit vehicle purchases, or $100,000 in UMTA planning funds. Recipients of FAA airport program funds who receive planning funds in excess of $75,000 or more than $250,000 (general aviation airports), $400,000 (non-hub airports), or $500,000 (hub airports) in FAA assistance also must submit overall goals. UMTA or FAA recipients who are not required to have an MBE program by § 23.41 need not comply with the goal setting provisions of Subpart D.

Paragraph (b) describes how recipients calculate their overall goals. Recipients of

FHWA funds use as the base for calculating their percentage goal all Federal-aid funds that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year. Funds authorized by section 202 of the STAA are considered to be Federal-aid highway funds for this purpose. For UMTA or FAA funds, the base is all Federal funds (exclusive of funds to be expended for transit vehicle purchases) that the recipient will expend in DOT-assisted contracts in the forthcoming fiscal year. The UMTA or FAA Administrator may, however, allow recipients to base their goals on Federal funds received for a particular grant, project, or group of grants or projects.

The Department is aware that recipients may not be aware of the exact amount of Federal funds to be received or to be used in Federally-assisted contracts in the forthcoming fiscal year. However, it is reasonable to expect that recipients will have a close enough projection so that they can determine a reasonable expectation for disadvantaged business participation expressed in percentage terms.

Paragraph (c) provides that, with the exception of UMTA or FAA recipients calculating their goals on a grant or project basis, each UMTA, FHWA, or FAA recipient which must submit an overall goal is required to do so by the August 1 preceding the beginning of the fiscal year to which the goals apply. For example, goal submissions pertaining to fiscal year 1985 are due August 1, 1984. In the case of Fiscal Year 1984, DOT expects recipients to submit their overall goals for approval as close to August 1 as possible.

Paragraph (d) provides that, if the recipient is submitting a goal of ten percent or more, the recipient simply submits the goal under the procedures of § 23.45(g) of this part, exactly in the manner that goals have been required to be submitted under the existing regulation.

Paragraph (e) concerns the situation in which a recipient is requesting approval of an overall goal of less than ten percent. Such a recipient is required to comply with the steps set forth in § 23.45(g). However, it is required to take three additional steps. First, it must submit a justification for its request containing the information listed in § 23.65.

Second, it must ensure that the request is signed or concurred in by the Governor of the state (in the case of a state transportation agency) or the Mayor or other elected official responsible for the operation of a mass transit agency. If the official responsible for the operation of a mass transit agency or airport sponsor is not a Mayor, another appropriate elected official or officials should provide the signature or concurrence (e.g., a County Executive, the Chairman of a Board of Directors for a transit authority consisting of elected officials, etc.). The reason for this requirement is to ensure that a request for a goal of less than ten percent has the backing of the responsible elected official. This should help to prevent frivolous requests or requests based solely on the views of the non-elected staff of a state or local agency. It is also intended to protect the Department from becoming involved in a disagreement between, for example, a state transportation agency and a governor over disadvantaged business policy. It will also signal to the Department that a request for a lower goal has the backing of the highest responsible elected official involved with the jurisdiction.

The third requirement is that, before making a request for a goal of less than ten percent, the recipient must consult with minority and general contracting associations, community organizations (particularly minority community organizations) and other officials or organizations which can be expected to have information concerning the availability of disadvantaged businesses and the adequacy of recipients' efforts to increase the participation of such businesses. This consultation need not involve a formal public comment period. However, it should involve contact between responsible official(s) of the recipient and representatives of the organizations consulted, which should also have the opportunity to provide written information.

The provision is based on the belief that the organizations consulted are likely to be in a position to give the recipient useful information concerning the availability of disadvantaged businesses and the effectiveness of and problems with the recipient's efforts to increase disadvantaged business participation. The information sought in the consultation is intended to include the views of the consulted parties on the points listed in paragraph (a)—(f) of § 23.65. Such information is important to the recipient in formulating a request for a goal of less than ten percent, the Department in evaluating such a request, and to both the recipient and the Department in attempting to determine what additional steps would be appropriate to increase disadvantaged business participation in the future.

There may be some circumstances in which a recipient will have failed to consult with a party whose information could be very useful to the formulation and evaluation of a request for a goal less than ten percent. If the Administrator becomes aware of such a case, the Administrator has the discretion to tell the recipient to go back and consult with that party. Pending this further consultation, the Administrator would not approve the request for a goal of less than ten percent.

Section 23.65 Content of Justification.

Section 23.65 lists the types of information that a recipient seeking a goal of less than ten percent must provide to the Administrator. The purpose of this information is to enable the Department to make an informed determination of what the reasonable expection for the recipient's disadvantaged business participation level is for the forthcoming fiscal year. These items of information are discussed in greater detail in Appendix D. In the absence of a justification, the FHWA, UMTA, or FAA Administrators will not be able to consider a request for a goal of less than ten percent.

Section 23.66 Approval and Disapproval of Overall Goals.

Paragraph (a) of this section concerns the situation in which a recipient submits for approval an overall goal of ten percent or more. In response to such a request, the Administrator follows the review and approval procedure provided in § 23.45(g) of the existing rule. The FHWA, UMTA, or FAA Administrators will review and approve goals submitted under this paragraph in the same manner and in accordance with the same policies as they have reviewed and approved overall goals under the existing 49 CFR Part 23.

Paragraph (b) concerns a situation in which a recipient has requested approval of a goal of less than ten percent. In order to approve the goal the recipient has requested, the Administrator must make two determinations. First, the Administrator must determine that the recipient is making all appropriate efforts to increase disadvantaged participation on its DOT-assisted contracts to at least a ten percent level. Second, the Administrator must determine that, despite the recipient's efforts, the goal requested by the recipient is the reasonable expectation, short of ten percent, for the participation of disadvantaged businesses in its DOT-assisted contracts, given the availability of disadvantaged businesses to work on these contracts.

Both of these determinations are very important. The concept of a goal as the reasonable expectation for the recipient's performance recognizes the possibility that there may be limits, related to the availability of disadvantaged businesses, that prevent the attainment of a ten percent goal. Before granting a request for a goal below ten percent, the Administrator must determine that such a limit does in fact exist. However, the idea of a reasonable expectation also assumes that the recipient is doing everything it can to increase disadvantaged business participation, both by seeking to increase the availability of disadvantaged businesses and seeking to increase the ability of available disadvantages businesses to work on its contracts. If the recipient is not taking all appropriate steps to increase disadvantaged business participation, then the goal it has requested is not its reasonable expectation for disadvantaged business participation.

If the Administrator does not approve the goal the recipient has requested, the Administrator, after consulting with the recipient, establishes an adjusted overall goal, which represents his or her determination of the reasonable expectation for recipient's disadvantaged business participation. This adjusted overall goal is on information provided by the recipient or any other information available to the Administrator from other sources, including input from interested groups and the past performance of the recipient or other recipients whose situation is analogous to that of the recipient in question. In approving either the goal requested by the recipient or in establishing an adjusted overall goal, the Administrator may always condition the approval or establishment of an overall goal on any reasonable future action by the recipient.

Section 23.67 Special Provision for Transit Vehicle Manufacturers.

This section addresses the special situation of the purchase of transit vehicles by UMTA recipients. The intent of this section is to provide a simplified method by which transit vehicle manufacturers and UMTA recipients can meet disadvantaged business obligations. The Department does not directly regulate transit vehicle manufacturers, since they are not the recipients of Federal financial assistance from UMTA. Rather, they are contractors to UMTA recipients. Consequently, paragraph (a) imposes the basic obligation of this section on UMTA recipients themselves.

Paragraph (a) is a requirement that UMTA recipients condition the authority of manufacturers to bid on UMTA-assisted transit vehicle procurements on a certification by the manufacturer that it has complied with the other provisions of this section. In order to permit manufacturers reasonable start-up time, and to avoid disruption of the whole procurement process, this requirement does not go into effect until October 1, 1983.

Paragraph (b) requires that, in order to make this certification, manufacturers have UMTA-approved overall goal. The base for calculating these goals is the amount of UMTA financial assistance participating in transit vehicle contracts to be performed by the manufacturer during the fiscal year in question. The Department is aware that UMTA recipients order some vehicles from foreign manufacturers and that the vehicles produced by domestic manufacturers use foreign components in some cases. The Department's regulation does not, of course, have extraterritorial application. Consequently, the manufacturer may exclude from the base from which the goal is calculated the value of the work performed abroad. For example, suppose an UMTA recipient buys a bus from a Canadian manufacturer for $100,000. Fifty percent of the work on the bus is performed in Canada. In this case, the amount of funds contributing toward the base from which the manufacturer's goal is calculated is $40,000 (i.e., eighty percent of the $50,000 of the value of the bus attributable to work performed in the United States).

In submitting an overall goal for the UMTA Administrator's approval, the manufacturer is required to follow the same procedures as recipients with respect to timing, justification of goals, etc. The Administrator follows the same criteria and has the same authority with respect to approval and conditioning of recipient's overall goals as he or she does with respect to recipient's goals. The UMTA Administrator may issue additional guidance with respect to procedures for the submission of overall goals and the content or justification of overall goals that take into account special circumstances of transit vehicle manufacturers, if this appears appropriate.

Paragraph (c) provides that the manufacturer may make the certification to recipients required by paragraph (a) if it has submitted the goals provided for by this section and the UMTA Administrator has either approved them or not disapproved them. This provision is intended to prevent delays in transit vehicle procurements.

Section 23.68 Compliance.

Paragraph (a) points out that compliance with Subpart D, as distinguished from compliance with other portions of the regulation, is enforced through § 23.68 rather than through Subpart E of the regulation. For example, a recipient's failure to have an approved overall goal as required by Subpart D would be treated under § 23.68. A complaint of discrimination against a recipient by a particular disadvantaged business would be handled under the procedures of Subpart E. Paragraphs (b) and (d)(1) list the three circumstances in which a recipient may find itself in noncompliance with Subpart D. These are the only three circumstances in which a recipient may be found in noncompliance with Subpart D. While a recipient may be in noncompliance with 49 CFR Part 23 for other reasons, these other types of noncompliance are handled through the procedures of Subpart E.

Paragraph (b) names the first two situations in which a recipient may be found in noncompliance with Subpart D. First, the recipient can be in noncompliance by failing to have an approved overall goal as required by § 23.64. This includes not only the situation in which the recipient does not submit a goal to the Department for approval, but also situations in which a recipient does not accept an adjusted overall goal established by the Administrator or fails or refuses to carry out conditions established by the Administrator under § 23.66(e).

Second, a recipient may be in noncompliance if it does not have an approved disadvantaged business program. Subpart D does not, in itself, require the creation of such a program. However, such a program, as prescribed by other provisions of 49 CFR Part 23, is essential if a recipient is to comply with the disadvantaged business participation requirements of Subpart D. Consequently, the failure to have a program, or failure to have a program which fully meets the requirements of 49 CFR Part 23, is noncompliance with Subpart D.

For example, 49 CFR Part 23 requires that, before a recipient awards a contract, it ensure that the apparent successful bidder has met the contract goal or has demonstrated good faith efforts to do so. If a recipiet's program does not provide for making this determination before the award of contract, but instead provides for checking the disadvantaged business participation efforts of the contractor only after the award of the contract, the recipient has a program that does not conform to 49 CFR Part 23. The recipient may therefore be found in noncompliance with Subpart D.

Paragraphs (c) and (d)(1) concern the procedure that recipients and the Department must follow when a recipient is falling or has fallen short of its approved overall goal. The goal-setting process is intended to determine, in advance, the reasonable expectation for the recipient's disadvantaged business participation. These paragraphs are intended to provide for the situation in which the recipient's performance does not meet this expectation. At any time the Administrator requests it, or at the recipient's own initiative, the recipient would make an explanation to the Administrator concerning why the goal could not be achieved. This explanation, if it is to be satisfactory to the Administrator, must demonstrate that recipient's failure to meet the goal is for reasons beyond the recipient's control.

For example, if the recipient expected substantial disadvantaged business participation in a major project, and the project was postponed by litigation or a natural disaster, the recipient could make a case that its failure to meet the goal was attributable to factors beyond its control. A situation that might arise more frequently concerns the failure of contractors to meet contract goals. Under the Department's regulation, recipients may award contracts to contractors who do not meet contract goals if these contractors demonstrate to the recipient that they have made good faith efforts to do so. It is conceivable that a recipient would have set contract goals commensurate with its overall goal, would have given appropriate scrutiny to the claims of contractors that they made unsuccessful but good faith efforts to meet these contract goals, and awarded contracts to contractors who did not meet contract goals in a number of instances. Collectively, these contract awards would cause the recipient to fall below its overall goal.

The Administrator may take circumstances of this kind into account in determining whether a recipient's failure to meet its overall goal was because of factors beyond the recipient's control. In doing so, however, the Administrator also would consider the degree of scrutiny by the recipients of contractors' claims of unsuccessful good faith efforts and the efforts the recipient made in order to make up for shortfalls in particular contracts and prevent such shortfalls in other contracts.

If the recipient's explanation that factors beyond its control prevented achievement of the overall goal is determined by the Administrator to justify the failure to reach the goal, the matter is closed. If the recipient does not provide an explanation or if the Administrator determines that the recipient's explanation is not adequate, the Administrator may take the additional step of directing the recipient to take appropriate remedial action. Remedial action includes prospective steps to improve disadvantaged business participation, such as additional outreach, assistance to disadvantaged businesses or, where not inconsistent with state or local law, the use of set-asides. In order to take the remedial steps which the Administrator prescribes, the recipient may have to devote additional resources to the task.

Failure or refusal by the recipient to take these remedial steps is the third form of noncompliance with Subpart D. The Department wants to make it very clear that failure to meet an overall goal, as such, does not constitute noncompliance with Subpart D. However, if the recipient fails to meet the goal, does not satisfactorily explain its failure to meet the goal as being beyond its control, and then fails or refuses to take remedial steps prescribed by the Administrator, it would be in noncompliance.

Paragraph (e) sets forth the sources of sanctions for recipient noncompliance under Subpart D. These sanctions are the same measures that are available to the FHWA, UMTA or FAA Administrator with respect to the failure of a recipient to carry out any condition of receiving Federal financial assistance.

Section 23.69 Challenge Procedure.

The proposal in the NPRM to make the presumption of social and economic disadvantage rebuttable caused some confusion among recipients who commented. They asked whether this meant that they had to investigate the social and economic status of each business owner that sought certification for programs covered by Subpart D. They also asked by what criteria, and through what procedure, the rebuttable presumption would be applied.

This section is intended to answer these questions. First, the basic meaning of a presumption of social and economic disadvantage is that the recipient *assumes* that a member of the designated groups is socially and economically disadvantaged. In making certification decisions, the recipient relies on this presumption, and does not investigate the social and economic status of individuals who fall into one of the presumptive groups.

However, saying that the presumption is rebuttable means that a third party may challenge the actual social and/or economic disadvantage of a business owner who has received or is seeking certification for his firm from the recipient. The procedures for making such a challenge are spelled out in this section. They are set forth in detail in § 23.69 and are basically self-explanatory. Two points deserve emphasis. First, the procedures are intended to be informal. Recipients are not required to establish elaborate court-like tribunals, use strict rules of evidence, etc. Second, while a challenge is in progress, the presumption of social and economic disadvantage remains in effect. Therefore, if a firm has been certified, and the social and economic disadvantage of its owner is under challenge, the firm continues to be certified and eligible to be considered a disadvantaged business for purposes of the recipient's DOT-assisted contracting activities.

Amendments to § 23.41(a)

The NPRM proposed to make technical amendments to § 23.41(a)(2)(i) and § 23.41(a)(3)(ii). These amendments added additional UMTA funding sources (e.g. Section 9A) to the list of sources from which funds would contribute toward the threshold amounts for determining whether UMTA recipients had to have MBE programs. There were no comments on these proposed changes. These amendments are adopted unchanged from the NPRM. The final rule makes similar amendments to § 23.41 (a)(2)(ii) and (a)(3)(iii).

Relationship Between Subpart D and the Remainder of 49 CFR Part 23

In order to prevent uncertainty, the Department wishes to restate the relationship between Subpart D and the remainder of 49 CFR Part 23. Under 49 CFR Part 23, certain recipients are required to have MBE programs. It is only these recipients who are required to follow the provisions of Subpart D. Recipients who must implement Subpart D do so only with respect to their FHWA and UMTA programs cited in Subpart D. For example, a state department of transportation receiving funds from FHWA, UMTA, NHTSA, FRA, and FAA would be required to follow the Subpart D goal procedures with respect only to its FHWA and UMTA funds. It would not be required to do so for its FAA, NHTSA, and FRA funds. The recipient would continue to follow all applicable procedures of 49 CFR Part 23 with respect to the FAA, FRA, and the NHTSA funds.

With respect to FHWA and UMTA-assisted programs, recipients will now set only one DBE goal, at both the overall and contract goal level. There are no longer separate DBE and WBE goals. Rather, the single DBE goal applies to all DBEs, whether they are owned and controlled by minorities or by women.

The contract award procedures of 49 CFR Part 23 apply to contracts under Subpart D just as they do to contracts under other provisions of 49 CFR Part 23. Recipients may award contracts to those successful bidders who meet contract goals or demonstrate that they made good faith efforts to do so.

Recipients must certify the eligibility of firms to participate under Subpart D programs just as they do with respect to programs covered by other provisions of 49 CFR Part 23. For businesses owned and controlled by members of the presumptive groups listed in the definition of socially and economically disadvantaged individuals in Subpart D, the certification process is, with one exception, exactly the same as the certification process that has existed all along under 49 CFR Part 23. The exception is that individuals with origins in Burma, Thailand, and Portugal are presumed to be socially and economically disadvantaged. They can be eligible under Subpart D only if they successfully demonstrate to the recipient that they are socially and economically disadvantaged as individuals.

However, businesses owned and controlled by individuals with origins in these countries continue to be eligible minority businesses under other provisions of 49 CFR Part 23. The result is that these firms may be certified for participation in FAA, FRA, NHTSA, or other DOT-assisted programs as before, but must make an individual showing of social and economic disadvantage in order to be regarded as eligible to participate in FHWA and UMTA programs as disadvantaged businesses. The same requirement for an individual determination of social and economic disadvantage applies to any individual who is not a member of one of the presumptive groups, such as a nonminority woman, a handicapped person, etc.

Decertification Procedures

Substantial concern has been expressed about the infiltration of DOT-assisted programs by "fronts"—businesses that claim to be owned and controlled by minorities, women, or other disadvantaged individuals, but which, in fact are ineligible for participation is DOT-assisted programs as MBEs, WBEs or disadvantaged businesses.

The Department wants to take this opportunity to reemphasize the importance of scrutiny of all firms seeking to participate in DOT-assisted programs. We believe strongly that recipients should take prompt action to ensure that only firms meeting the eligibility criteria of 49 CFR Part 23 participate as MBEs, WBEs, or disadvantaged businesses in DOT-assisted programs. This means not only that recipients should carefully check the eligibility of firms applying for certification for the first time, but also that they should review the eligibility of firms with existing certifications in order to ensure that they are still eligible. A firm's circumstances, organization, ownership or control can change over time, resulting in a once-eligible firm becoming ineligible. A second look at a firm previously found to be eligible may reveal factors leading, on renewed consideration, to a determination that it is ineligible.

49 CFR Part 23 does not, as presently drafted, prescribe any particular procedures for actions by recipients to remove the eligiblity of firms that they have previously treated as eligible. When a recipient comes to believe that a firm with a current certification is not eligible, the Department recommends that the recipients take certain steps before removing the firm's eligibility. The recipient should inform the firm in writing of its concerns about the firm's eligibility, give the firm an opportunity to respond to these concerns in person and in writing, and provide the firm a written explanation of the reasons for the recipient's final decision. This process may be brief and informal. For example, the firm's opportunity to respond to the recipient's concerns need not involve a formal court-type hearing. However, in the interest of ensuring that eligibility removal decisions are made fairly, these steps should take place before a firm's eligibility is removed. The Department believes that such a procedure in so-called "decertification" cases will make the procedure fairer and better administrative-

ly, as well as help prevent unnecessary procedural litigation. Procedures of this kind are not a regulatory requirement, but the Department believes that, as a matter of policy, that they are advisable for recipients to use.

Once a recipient has made a final decision on certification, that determination goes into effect immediately with respect to the recipient's DOT-assisted contracts (see § 23.53(g)). If a firm that has been denied certification or has been decertified appeals the recipient's action to the Department under § 23.55, or if a third party challenges the recipient's decision to certify the firm under § 23.55, the recipient's action remains in effect until and unless the Department makes a determination under § 23.55 reversing the recipient's action. The recipient's action is not stayed during the pendancy of a § 23.55 appeal.

For example, if a recipient has decertified a firm and the firm appeals the decertification to DOT, the firm remains ineligible for consideration as a disadvantaged business with respect to the recipient's DOT-assisted programs until and unless the Department finds that the firm is eligible. Likewise, if the recipient has certified the firm as eligible, the firm remains eligible while the Department's consideration of a third party's challenge to its eligiblity is pending. The Department has followed this policy and interpretation of its regulations consistently under the existing rule, and we will continue to do so with respect to Subpart D.

There is only one exception to this rule. Section 23.55(c) provides that, in appropriate cases, the Secretary may deny the firm in question eligiblity to participate as an MBE (or disadvantaged business) on DOT-assisted contracts let during the pendacy of the investigation, after providing the firm an opportunity to show cause by written statement to the Secretay why this should not occur. This paragraph is intended, and has been consistently interpreted and applied by the Department, to cover only a situation in which the recipient has decided that a firm is eligible and a third party has challenged the correctness of the recipient's determination. As a matter of policy, the Department believes that the award of contracts to ineligible firms is a very serious blow to the integrity of the Department's program. Consequently, if it appears to the Department that a challenged firm's eligibility is in serious doubt, the Department, under § 23.55(c), can administratively "enjoin" the firm's participation pending a final determination on the merits of the challenge to its certification. This provision does not, however, authorize the Department to maintain a firm's certification in effect pending the outcome of the § 23.55 Appeal, when the recipient has refused to certify or has decertified the firm.

[48 FR 33442, July 21, 1983, as amended at 52 FR 39231, Oct. 21, 1987; 53 FR 18287, May 23, 1988]

APPENDIX B—DETERMINATIONS OF BUSINESS SIZE

In determining the eligibility of businesses for purposes of 49 CFR Part 23, recipients must determine whether or not a business is a small business concern as defined by section 3 of the Small Business Act. If a business is not a small business concern according to these standards, then it is not eligible to participate as an MBE, WBE, or disadvantaged business under 49 CFR Part 23. This is true even though the business may be owned and controlled by minorities, women, or socially and economically disadvantaged individuals and is eligible in all other respects. Even a firm certified by the SBA under the 8(a) program is not eligible under this regulation if it is not a small business.

In determining whether a business is a small business concern, recipients should apply the standards established by the Small Business Administration in 13 CFR Part 121. In particular, recipients should refer to § 121.3-8 (Definition of Small Business for Government Procurement) and § 121.3-12 (Definition of Small Business for Government Subcontractors). This appendix lists the most frequent applications of these sections to the kinds of contracting done by FHWA and UMTA recipients. For information on types of businesses not listed in this appendix (e.g., manufacturers), recipients should consult § 121.3-8 and the Appendices to 13 CFR Part 121.

Recipients should apply the following size standards:

1. *Subcontracts of $10,000 or less:* A business is small if, including its affiliates, it does not have more than 500 employees.

2. *Subcontracts over $10,000 and prime contracts:*

A business is regarded as small if it meets the following criteria:

(a) *Construction.*

(1) General Construction (in which less than 75 percent of the work falls into one of the categories in paragraph (2)): The firm's average annual receipts for the three preceding fiscal years do not exceed $12 million.

(2) Special trade contractors:

Type of firm	Maximum average annual receipts in preceding 3 fiscal years
Plumbing, heating (except electric) and air-conditioning.	$5 million for all types of contractors on this list.
Painting, paperhanging, and decorating	
Masonry, stone setting, and other stonework.	
Plastering, drywall, acoustical and insulating work.	
Terazzo, tile, marble, and mosaic work	
Carpentering and flooring	
Floor laying and other floorwork	
Roofing and sheet metal work	
Concrete work	
Water well drilling	
Structural steel erection	
Glass and glazing work	
Excavating and foundation work	
Wrecking and demolition work	
Installation or erection of buildings equipment.	
Special trade contractors, not elsewhere classified.	

(b) *Suppliers of manufactured goods:* The firm, including its affiliates, must not have more than 500 employees.

(c) *Service contractors:*

Type of firm	Maximum average annual receipts in preceding 3 fiscal years (in millions of dollars)
Engineering	$7.5
Janitorial and custodial	4.5
Computer programming or data processing	4
Computer Maintenance	7
Protective Services	4.5
Others not mentioned in 13 CFR 121.3–8(e)	2

APPENDIX C—GUIDANCE FOR MAKING DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

Before making any determination of social and economic disadvantage, the recipient should always determine whether a firm is a small business concern. If it is not, then the firm is not eligible to be considered a disadvantaged business, and no further determinations need be made.

Under the definition of "socially and economically disadvantaged individual" used in Subpart D of this part, members of the named groups (Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian-Indian Americans) and persons certified as socially and economically disadvantaged by the Small Business Administration (SBA) under the SBA's section 8(a) program are presumed to be both socially and economically disadvantaged. This presumption is rebuttable. This means that, as part of a challenge to the eligibility of a firm a recipient has certified under § 23.69 of this regulation, a third party may present evidence that the firm's owners are not truly socially and/or economically disadvantaged, even though they are members of one of the presumptive groups. Recipients must follow the challenge procedure in § 23.69 when a challenge is made, using this appendix for guidance in making determinations under that procedure.

Under the regulation, anyone who has been certified by SBA under its 8(a) program as socially and economically disadvantaged is automatically considered to be a socially and economically disadvantaged individual for purposes of this regulation. However, the absence of an 8(a) certification does not mean that an individual or firm is ineligible under this regulation.

Recipients should continue the existing practice of making their own judgments about whether an individual is in fact a member of one of the presumptive groups. If an individual has not maintained identification with the group to the extent that he or she is commonly recognized as a group member, it is unlikely that he or she will in fact have suffered the social disadvantage which members of the group are presumed to have experiences. If an individual has not held himself or herself out to be a member of one of the groups, has not acted as a member of a community of disadvantaged persons, and would not be identified by persons in the population at large as belonging to the disadvantaged group, the individual should be required to demonstrate social disadvantage on an individual basis.

For example, an individual could demonstrate that he had a Chinese ancestor. However, this hypothetical person has never lived in a Chinese-American community, has held himself out to be white for driver's license or other official records purposes, has not previously claimed to be a Chinese-American, and would not be perceived by others in either the Chinese-American community or non-minority community to be a Chinese-American (or any other sort of Asian-Pacific American) by virtue of his appearance, culture, language or associations. The recipient should not regard this individual as an Asian-Pacific American.

Individuals who are not presumed to be socially and economically disadvantaged by virtue of membership in one of these groups may, nevertheless, be found to be socially and economically disadvantaged on a case-by-case basis. If an individual requests that his or her business be certified as an eligible disadvantaged business under Subpart D, the recipient, as part of its certification process, is responsible for making a determination of social and economic disadvantage.

In making determinations of social and economic disadvantage, recipients should be guided by the following standards, which have been adopted from materials prepared by the SBA.

A. SOCIAL DISADVANTAGE

(1) *Elements of Social Disadvantage.* In order to determine that an individual is socially disadvantaged, the recipient must conclude that the individual meets the following standards:

(i) The individual's social disadvantage must stem from his or her color; national origin; gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause beyond the individual's control. The individual cannot establish social disadvantage on the basis of factors which are common to small business persons who are not socially disadvantaged. For example, because of their marginal financial status, many small businesses have difficulty obtaining credit through normal banking channels. An individual predicating a social disadvantage claim on denial of bank credit to his or her firm would have to establish that the denial was based on one or more of the listed causes, or similar causes—not simply on the individual's or the firm's marginal financial status.

(ii) The individual must demonstrate that he or she has personally suffered social disadvantage, not merely claim membership in a non-designated group which could be considered socially disadvantaged. This can be achieved, for example, by describing specific instances of discrimination which the individual has experienced, or by recounting in some detail how his or her development in the business world has been thwarted by one or more of the listed causes or similar causes. As a general rule, the more specific an explanation of how one has personally suffered social disadvantage, the more persuasive it will be. In assessing such facts, the recipient should place substantial weight on prior administrative or judicial findings of discrimination experienced by the individual. Such findings, however, are not necessarily conclusive evidence of an individual's social disadvantage; nor are they a prerequisite for establishing social disadvantage.

(iii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries.

(iv) The individual's social disadvantage must be chronic, longstanding, and substantial, not fleeting or insignificant. Typically, a number of incidents illustrating a person's social disadvantage, occurring over a substantial period of time, would be necessary to make a successful claim. Usually, only by demonstrating a series of obstacles which have impeded one's progress in the business world can an individual demonstrate chronic, longstanding, and substantial social disadvantage.

(v) The individual's social disadvantage must have negatively affected his or her entry into, and/or advancement in, the business world.

The closer the individual can link social disadvantage to impairment of business opportunities, the stronger the case. For example, the recipient should place little weight on annoying incidents experienced by an individual which have had little or no impact on the person's career or business development. On the other hand, the recipient should place greater weight on concrete occurrences which have tangibly disadvantaged an individual in the business world.

(2) *Evidence of Social Disadvantage.* The recipient should entertain any relevant evidence in support of an individual's claim of social disadvantage. In addition to a personal statement from the individual claiming to be socially disadvantaged, such evidence may include, but is not limited to: third party statements; copies of administrative or judicial findings of discrimination; and other documentation in support of matters discussed in the personal statement. The recipient should particularly consider and place emphasis on the following experiences of the individual, where relevant: education, employment, and business history. However, the individual may present evidence relating to other matters as well. Moreover, the attainment of a quality education or job should not absolutely disqualify the individual from being found socially disadvantaged if sufficient other evidence of social disadvantage is presented the recipient.

(i) *Education.* The recipient should consider, as evidence of an individual's social disadvantage, denial of equal access to business or professional schools; denial of equal access to curricula; exclusion from social and professional association with students and teachers; denial of educational honors; social patterns or pressures which have discouraged the individual from pursuing a professional or business education; and other similar factors.

(ii) *Employment.* The recipient should consider, as evidence of an individual's social disadvantage: discrimination in hiring; discrimination in promotions and other aspects of professional advancement; discrimination in pay and fringe benefits; discrimination in other terms and conditions of employment; retaliatory behavior by an employer; social patterns or pressures which have channelled the individual into non-professional or non-business fields; and other similar factors.

(iii) *Business History*. The recipient should consider, as evidence of an individual's social disadvantage, unequal access to credit or capital; acquisition of credit under unfavorable circumstances; discrimination in receipt (award and/or bid) of government contracts; discrimination by potential clients; exclusion from business or professional organizations; and other similar factors which have retarded the individual's business development.

B. ECONOMIC DISADVANTAGE

Recipients should always make a determination of social disadvantage before proceeding to make a determination of economic disadvantage. If the recipient determines that the individual is not socially disadvantaged, it is not necessary to make the economic disadvantage determination.

As a general rule, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunites of a socially disadvantaged individual, consideration will be given to both the disadvantaged individual and the applicant concern with which he or she is affiliated.

In considering the economic disadvantage of firms and owners, it is important for recipients to understand that they are making a comparative judgment about relative disadvantage. Obviously, someone who is destitute is not likely to be in any position to own a business. The test is not absolute deprivation, but rather disadvantage compared to business owners who are not socially disadvantaged individuals and firms owned by such individuals.

It is the responsibility of applicant firms and their owners to provide information to the recipient about their economic situation when they seek eligibility as disadvantaged businesses. Recipients are encouraged to become as knowledgeable as they can about the types of businesses with which they deal, so that they can make a reasonably informed comparison between an applicant firm and other firms in the same line of business. Recipients are not required to make a detailed, point-by-point, accountant-like comparison of the businesses involved. Recipients are expected to make a basic judgment about whether the applicant firm and its socially disadvantaged owner(s) are in a more difficult economic situation than most firms (including established firms) and owners who are not socially disadvantaged.

OTHER ELIGIBILITY CONSIDERATIONS

It is very important for recipients to realize that making a determination of social and economic disadvantage, standing alone, does not mean that a firm is eligible. The recipient must also determine that the firm is 51 percent owned by socially and economically disadvantaged individuals and that these individuals control the firm. In making these latter determinations, recipients should continue to follow §§ 23.51-23.53 of Subpart C of 49 CFR Part 23.

If a firm or other party believes that any recipient's social and economic disadvantage determination is in error, the firm or party may make an administrative certification appeal to the Department as provided in 49 CFR 23.55.

APPENDIX D—JUSTIFICATION FOR REQUESTS FOR APPROVAL OF OVERALL GOALS OF LESS THAN TEN PERCENT

The purpose of a justification for a request for approval of an overall goal of less than ten percent is to explain why the goal requested by the recipient is the reasonable expectation for the participation of disadvantaged businesses in the recipient's DOT-assisted contracts. The justification has two basic elements. First, the recipient should show that it is doing as much as it can to increase disadvantaged business participation to at least a ten percent level. Second, the recipient should show that, given the availability of disadvantaged businesses, the requested goal is the reasonable expectation for the level of disadvantaged business participation that these efforts are likely to obtain.

With respect to the specific elements of the justification listed in § 23.65, the Department offers the following guidance, usually in the form of questions the answers to which will help the Department make an informed decision. It should be emphasized that this material is guidance, and is not intended to create a regulatory requirement or a mandatory list of the contents for recipient's submissions. However, it will help the Department to make expeditious and well-informed decisions if recipients provide reasonably complete and detailed information. Doing so will also facilitate suggestions by the Department on additional ways recipients can increase disadvantaged business participation.

(a) *Efforts to locate disadvantaged businesses*. What contacts has the recipient made with sources of information about disadvantaged businesses (such as minority contractors, associations, the Commerce Department's Minority Business Development Administration, DOT Office of Small and

Disadvantaged Utilization (and its Program Management Centers), and other recipients' directories of disadvantaged businesses)? In what geographic areas has it sought to locate additional disadvantaged businesses? Have these or other information sources produced additional names of disadvantaged businesses potentially available to work on the recipient's DOT-assisted contract? What follow-up was done with respect to these firms?

(b) *Efforts to make disadvantaged businesses aware of contracting opportunities.* What steps does the recipient take through publications, advertising, pre-bid conferences, direct contact, putting disadvantaged businesses in touch with firms that may bid on prime contracts, and other means to let disadvantaged businesses know about specific contracting and subcontracting opportunities as they arise? (Activity of this kind by the recipient is important because, in many cases, disadvantaged businesses may not be in a position to learn of contracting opportunities through informal communications networks available to non-disadvantaged firms.)

(c) *Initiatives to encourage and develop disadvantaged businesses.* What is the recipient doing to assist the formation and growth of disadvantaged firms, by means such as training, technical assistance, financial assistance and involvement of other sources of support (such as the FHWA Supportive Services Program and other Federal, state, or local agencies and associations)? What has the recipient done to facilitate the ability of disadvantaged businesses to perform contracts (e.g., splitting a large contract or project into smaller segments that disadvantaged businesses can more readily perform)?

(d) *Legal or other barriers to disadvantaged business participation.* What specific barriers to disadvantaged business participation has the recipient identified? (Common barriers include bonding, prequalification and licensing requirements; difficulty in obtaining financing; any state or local residency requirement or preference, or any other formal or informal limitations on the area from which disadvantaged businesses are sought; and the reluctance of some members of the non-disadvantaged contracting community to use firms owned and controlled by socially and economically disadvantaged persons.) What is the recipient doing about the barriers it has identified? (Examples of efforts to overcome or mitigate the effect of these barriers include changes to or exceptions from state or local requirements as they affect disadvantaged businesses, technical or financial assistance to disadvantaged businesses to help them meet existing requirements, or cooperative efforts with financial institutions and nonminority contractors' associations.)

(e) *The availability of disadvantaged businesses.* How many disadvantaged businesses are available to perform work for the recipient on DOT-assisted contracts? The starting point for the recipient's information should be its directory or list of certified disadvantaged businesses. The number of firms in this directory may not give a complete picture, however. Disadvantaged firms in other jurisdictions, not currently certified by the recipient, may be willing and able to work on the recipient's contracts. On the other hand, firms in the directory may have limited availability (e.g., lack of interest in the recipient's work, other commitments, limitations of the amount of work they can handle). In some cases (e.g., where a state spends a large portion of its funds on a single large project requiring very specialized contractors), the availability of work that disadvantaged firms can perform could be a limitation. The recipient, as appropriate, should discuss these factors as they affect a determination of the reasonable expectation for disadvantaged business participation in its DOT-assisted contracts.

The recipient should not only advise the Department how many disadvantaged firms exist, but also analyze the dollar volume of the recipient's work the available firms are likely to be able to perform in the fiscal year (or other period) in question.

(f) *Size and other characteristics of the recipient's jurisdiction's minority population.* What is the size of the minority population of the recipient's jurisdiction? (In some cases, not only the size but also the composition or residence pattern of the minority population may be relevant). Where relevant, what is the size of the minority population of nearby jurisdictions?

Minority population is usually not an exact index of the availability of disadvantaged businesses. In some cases, disadvantaged business participation levels for various recipients have ranged well above or below the minority population of the jurisdictions involved. In any event, recipients should tie any assertions they make on the basis of minority population to the effect they believe it has on disadvantaged business availability.

(g) *Views and information from the consultation process.* With whom has the recipient consulted and what did the consulted parties say with respect to anything in paragraph (a)-(f)? In particular, what were the views of and information provided by the disadvantaged business community concerning the availability of such firms, barriers to their participation and what is needed to overcome them, the efficacy of the recipient's efforts to increase disadvantaged business participation and what could be done to improve these efforts?

Subpart E—Compliance and Enforcement

§ 23.73 Complaints.

(a) *Filing.* Any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of this part may file a complaint in writing, signed and dated, with the Department. The complaint shall be filed no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was disclosed. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

(b) *Investigations.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Cooperation in investigation.* The respondent to the complaint shall cooperate fully with the investigation. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of this part.

(d) *Determinations.* Upon completion of the investigation, the Secretary informs the recipient or contractor and complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with this part, the conciliation procedures of § 23.81 and, if necessary, the enforcement procedures of § 23.83 are followed.

(e) *Intimidation or retaliation acts prohibited.* No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding, or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant shall be advised for the purpose of waiving the privilege.

§ 23.75 Compliance reviews of recipients.

(a) *Desk audit.* All compliance reviews conducted after financial assistance has been approved or contracts have been awarded begin with a desk audit. The desk audit is a review of all material and information concerning the recipient's MBE performance.

(b) *On-site review.* An on-site review includes interviews, visits to project or facility sites receiving DOT funds, and inspection of any statistical or documentary materials relevant to the recipient's performance which were not available for review during the desk audit.

(c) *Cooperation.* The recipient shall cooperate fully with these reviews. Failure or refusal to furnish requested information or failure to cooperate is a violation of this part.

(d) *Determination.* As a result of its review of the recipient, the Departmental element civil rights staff makes one of the following determinations:

(1) The recipient is in compliance with its MBE obligations; or

(2) There is reasonable cause to believe that the recipient is not in compliance with its MBE obligations in certain specified respects. Proceedings shall be begun in accordance with § 23.81 and, if necessary, § 23.83.

§ 23.81 Conciliation procedures for financial assistance programs.

(a) *Reasonable cause notice.* Whenever the responsible office of civil rights makes a determination of reasonable cause to believe that a recipient is in noncompliance, a notice is sent promptly and in writing by registered mail, return receipt requested, describing the areas of noncompliance requiring the applicant or recipient to show cause within 30 days why enforcement proceedings or other appropriate action to ensure compliance should not be instituted and offering the recipient an opportunity to conciliate. The responsible office of civil rights shall pursue conciliation efforts for at least 30 days from the date of the reasonable cause notice.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil

rights and recipient, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefor are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the recipient, requesting the recipient's acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 120 days of the notice of reasonable cause enforcement proceedings set forth in § 23.83 begin. The head of the responsible office of civil rights, upon a written determination that an additional 30 days are needed to complete conciliation, may extend the conciliation period for 30 days. Subsequent extensions may be made upon such written determinations. The determinations shall include reasons for the extension and shall be provided to the complainant and respondent.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the provision of financial assistance as long as the terms of the agreement are fulfilled. A compliance review is conducted by the Department element within nine months of the approval of an agreement.

§ 23.83 Enforcement proceedings for financial assistance programs.

(a) Whenever conciliation efforts pursuant to § 23.81 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with the Department's procedures for enforcing Title VI (49 CFR Part 21).

(b) A finding of noncompliance and the imposition of any sanction pursuant to these proceedings is binding on all other Departmental elements. Sanctions are limited to the recipient with respect to whom the noncompliance finding has been made and to the particular program or activity, or part thereof, in which noncompliance has been found.

§ 23.85 Emergency enforcement procedure.

(a) *General.* Whenever the Secretary determines that the conciliation and enforcement proceedings set forth in §§ 23.81 and 23.83 will not result in the timely and adequate enforcement of the provisions of this part, he/she initiates special enforcement procedures to obtain compliance.

(b) *Emergency reasonable cause notice.* A notice is sent, registered mail, return receipt requested, describing the areas of alleged noncompliance, setting forth the reasons why the normal course of conciliation and enforcement pursuant to §§ 23.81 and 23.83 will not result in timely and adequate enforcement, and requiring the recipient to show cause, within a specified period of time, generally not to exceed 15 days, why appropriate action, described in the notice, to ensure compliance should not be taken. The notice states that the recipient must respond in writing or orally on the record before an official appointed by the Secretary or the proposed action will be taken.

(c) *Decision.* If the Secretary, after reviewing the recipient's oral or written response, determines that such action is necessary, he/she orders that all or any part of the contracting activities of the recipient affected by the recipient's alleged noncompliance be halted until the matter is resolved under § 23.81 or § 23.83. The Secretary's action under this paragraph may not affect any contract already awarded. When the Secretary makes an order under this paragraph, resolution of the matter shall proceed on an expedited basis.

§ 23.87 Suspension and debarment; referral to the Department of Justice.

(a) If, at any time, any person has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, or otherwise acted in a manner subjecting that person or firm to suspension or debarment action under 49 CFR Part 29, he or she may contact the appropriate DOT element concerning the existence of a cause for suspension or debarment, as provided in 49 CFR 29.17.

(b) Upon the receipt of information indicating a violation of 18 U.S.C. 1001, or any other Federal criminal statute, the Department may refer the matter to the Department of Justice for appropriate legal action.

[50 FR 18494, May 1, 1985]

SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY

1. Name of firm ————————

2. Address of firm ————————

3. Phone Number of firm ————————

4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) ————————

————————————————

5. Nature of firm's business ————————

6. Years firm has been in business ————

7. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

a—Name	b—Race	c—Sex	d—Years of ownership	e—Ownership percentage	f—Voting percentage

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

8. Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

(1) Financial decisions————————

(2) Management decisions, such as—

a. Estimating ————————

b. Marketing and sales ————————

c. Hiring and firing of management personnel ————————

d. Purchases of major items or supplies —

(3) Supervision of field operations ————

9. For each of those listed in question 8, provide a *brief* summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.

11. Identify any owner (see item 7) or management official (see item 8) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

12. What are the gross receipts of the firm for each of the last two years?

Year ending ————————

$ ————————

Year ending ————————

$ ————————

13. Name of bonding company, if any: —

————————————————

Bonding limit ————————

Source of letters of credit, if any ————

14. Are you authorized to do business in the state as well as locally, including all necessary business licenses?

15. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as an MBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of ———— (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature ————————————
Name ————————————
Title ————————————
Date ————————————

Corporate Seal (where appropriate).

Date ————————————
State of ————————————
County of ————————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

[Seal]

Notary Public ————————————
Commission expires ————————————

SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

(This form need not be filled in if all joint venture firms are minority owned.)

1. Name of joint venture ————————
2. Address of joint venture ————————
3. Phone number of joint venture ————————
4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.) ————————

(a) Describe the role of the MBE firm in the joint venture. ————————

————————————

(b) Describe very briefly the experience and business qualifications of each non-MBE joint venturer: ————————

————————————

5. Nature of the joint venture's business —

————————————

6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of MBE ownership? ————————
8. Ownship of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)

(a) Profit and loss sharing.
(b) Capital contributions, including equipment.
(c) Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

(a) Financial decisions ————————
(b) Management decisions, such as:
(1) Estimating ————————
(2) Marketing and sales ————————
(3) Hiring and firing of management personnel ————————
(4) Purchasing of major items or supplies

————————————

(c) Supervision of field operations

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

AFFIDAVIT

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

————————	————————
Name of Firm	Name of Firm
————————	————————
Signature	Signature
————————	————————
Name	Name
————————	————————
Title	Title
————————	————————
Date	Date

Date ————————————
State of ————————————
County of ————————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

Notary Public ————————————
Commission expires ————————————

[Seal]

Date ———————————————
State of ———————————————
County of ———————————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

Notary Public ———————————————
Commission expires ——————— ———————

[Seal]

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
24.1 Purpose.
24.2 Definitions.
24.3 No duplication of payments.
24.4 Assurances, monitoring and corrective action.
24.5 Manner of notices.
24.6 Administration of jointly-funded projects.
24.7 Federal agency waiver of regulations.
24.8 Compliance with other laws and regulations.
24.9 Recordkeeping and reports.
24.10 Appeals.

Subpart B—Real Property Acquisition

24.101 Applicability of acquisition requirements.
24.102 Basic acquisition policies.
24.103 Criteria for appraisals.
24.104 Review of appraisals.
24.105 Acquisition of tenant-owned improvements.
24.106 Expenses incidental to transfer of title to the Agency.
24.107 Certain litigation expenses.
24.108 Donations.

Subpart C—General Relocation Requirements

24.201 Purpose.
24.202 Applicability.
24.203 Relocation notices.
24.204 Availability of comparable replacement dwelling before displacement.
24.205 Relocation planning, advisory services, and coordination.
24.206 Eviction for cause.
Sec.
24.207 General requirements—claims for relocation payments.
24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

24.301 Payment for actual reasonable moving and related expenses—residential moves.
24.302 Fixed payment for moving expenses—residential moves.
24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
24.304 Reestablishment expenses—nonresidential moves.
24.305 Ineligible moving and related expenses.
24.306 Fixed payment for moving expenses—nonresidential moves.
24.307 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

24.501 Applicability.
24.502 Moving and related expenses—mobile homes.
24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
24.504 Replacement housing payment for 90-day mobile home occupants.
24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Certification

24.601 Purpose.
24.602 Certification application.
24.603 Monitoring and corrective action.
APPENDIX A TO PART 24—ADDITIONAL INFORMATION
APPENDIX B TO PART 24—STATISTICAL REPORT FORM

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

SOURCE: 54 FR 8928, Mar. 2, 1989, unless otherwise noted.

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of § 24.101(a) (1), (2), (3), or (4) need not provide the assurances required by § 24.4(a)(1) or (2).

(2) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term

"functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under § 24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person*— (1) *General*. The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and 24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced*. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §§ 24.101(a) (1) and (2) , or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at § 24.101(a) (1) and (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in § 24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporated under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project.* The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business.* A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

(y) *Unlawful occupancy.* A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility.* The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances*—(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(i) Executive Order 11246—Equal Employment Opportunity.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(n) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are al-

locable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occu-

pant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including

information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services*—(1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.6, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing*--(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(*a*) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(t), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replace-

ment site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§ 24.303(a)(3) and § 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage

balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most

nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area; and

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified

methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, § 24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolesence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(d)(2).

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the

Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling*—(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency*—(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency hall make available any information equired for this purpose.

(b) A Federal agency that has acepted a State agency's certification ursuant to this subpart should withold its approval of any of its Federal nancial assistance to any project, 'ogram, or activity, in progress or to e undertaken by such State agency, if is found by the Federal agency that e State agency has failed to comply ith the applicable State law and regations implementing those provions of the Uniform Act for which e State agency would otherwise ve provided the assurances required sections 210 and 305 of the Uniform t. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification. The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

APPENDIX A TO PART 24—ADDITIONAL INFORMATION

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions

Section 24.2(d)(2) Definition of comparable replacement dwelling. The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced. Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations. This section of the part; provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation Assistance Advisory Services

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General Requirements—Claims for Relocation Payments

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.303(c).

Subpart D—Payment for Moving and Related Expenses

Section 24.306 Fixed Payment for Moving Expenses—Nonresidential Moves

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fundraising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage aa well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%—$42,010.18

$50,000.00
−42,010.18

Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 ÷ by $42,010.18 = .8331; $9,250.13 × .83 = $7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Subpart F—Mobile Homes

Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).

Line 7A is a new line item for reporting the business reestablishment expense payment.

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C. Real property acquisition subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

Form Approved
OMB No:
Exp. Date:
Attachment - Appendix B

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY ______________________

CITY/COUNTY/STATE ______________________

FEDERAL FUNDING AGENCY ______________________

The burden for this report is estimated to average   hours per response, including reviewing instructions, searching data sources, gathering/maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 and to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL(A)	OWNERS (B)	TENANTS(C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM		NO. OF DISPLACEMENTS	AMOUNT(B)
4. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC. 202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	ACTUAL EXPENSES-SEC 202(A)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	IN LIEU PAYMENTS-SEC. 202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES			
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)			
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS			
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)			
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)			
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		■	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		■	
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM			■

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF PARCELS (A)	COMPENSATION(B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		■

[54 FR 8928, Mar. 2, 1989; 54 FR 24712, June 9, 1989]

PART 25—[RESERVED]

PART 27—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.
27.1 Purpose.
27.3 Applicability.
27.5 Definitions.
27.7 Discrimination prohibited.
27.9 Assurance required.
27.11 Remedial action, voluntary action and compliance planning.
27.13 Designation of responsible employee and adoption of grievance procedures.
27.15 Notice.
27.17 Effect of State or local law.

Subpart B—Employment Practices

27.31 Discrimination prohibited.
27.33 Reasonable accommodation.
27.35 Employment criteria.
27.37 Preemployment inquiries.

Subpart C—Program Accessibility—General

27.61 Applicability.
27.63 Discrimination prohibited.
27.65 Existing facilities.
27.67 New facilities and alterations.

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

27.71 Federal Aviation Administration—airports.
27.73 Federal Railroad Administration—railroads.
27.75 Federal Highway Administration—highways.
APPENDIX A TO SUBPART D—ADVISORY INFORMATION ON PROGRAMMING FOR HANDICAPPED PERSONS

Subpart E—Mass Transportation Services for Handicapped Persons

27.81 Program requirement.
27.83 Public participation and coordination.
27.85 Submission and review of program.
27.87 Provision of service.
27.89 Monitoring.
27.91 Requirements for small recipients.
Sec.
27.93 Multi-recipient areas.
27.95 Full performance level.
27.97 Limit on required expenditures.
27.99 Eligible expenses.
27.101 Technical exemptions.
27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.
APPENDIX TO SUBPART E

Subpart F—Enforcement

27.121 Compliance information.
27.123 Conduct of investigations.
27.125 Compliance procedure.
27.127 Hearings.
27.129 Decisions and notices.

AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142 note. Subpart E is also issued under sec. 317 (c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 27.3 Applicability.

This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance.

§ 27.5 Definitions.

As used in this part:

"Accessible" means (a) with respect to new facilities, (1) conforming to the accessibility standards referenced in § 27.67(d) of this part, with respect to buildings and facilities to which these standards are applicable; and (2) with respect to vehicles other moving conveyances, (or fixed facilities to which the standards referenced in § 27.67(d) of this part do not apply,) able to be entered and used by a handicapped person;

"Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended.

"Air Carrier Airport" means an airport serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) Passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

"Closed station" means a station at which no services are provided to passengers by station attendants and at which trains make regularly scheduled stops.

"Department" means the Department of Transportation.

"Discrimination" means denying handicapped persons the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

"Facility" means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in, or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

"Flag stop" means any station which is not a regularly scheduled stop but at which trains will stop to entrain or detrain passengers only on signal or advance notice.

"Handicapped person" means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit

major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

"Head of Operating Administration" means the head of an operating administration within the Department (U.S. Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

"Mass transportation" or "public transportation" means transportation by bus, or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

"Mixed system" means a transportation system that provides accessible bus service to handicapped persons in certain areas or during certain hours and provides special service to handicapped persons in the other areas or during the other hours in which the transportation system operates.

"Open station" means a station at which passengers may make reservations and purchase tickets and where passenger assistance is available for entraining and detraining passengers on trains which make regularly scheduled stops.

"Passenger" means anyone, except a working crew member, who travels on a vehicle the service of which is governed by these regulations.

"Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient for the purpose of carrying out a program.

"Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to other activities, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

"Recipient" means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, for any Federal program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

"Secretary" means the Secretary of Transportation.

"Section 504" means section 504 of the Act.

"Special service system" means a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by handicapped persons, demand-responsive service, point of origin to point of destination service, and flexible routing and scheduling.

"Urbanized area" means an area so designated by the Bureau of Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in case of any such area, encompass the entire urbanized area within a State as designated by the Bureau of Census.

[44 FR 31468, May 31, 1979, as amended by Amdt. 1, 46 FR 37492, July 20, 1981; Amdt. 27-3, 51 FR 19017, May 23, 1986]

§ 27.7 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance administered by the Department of Transportation.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not handicapped;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that are as effective as those provided to persons who are not handicapped;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different programs or activities are available to handicapped persons, a recipient may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program, or

(iii) That yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid benefit, or service provided under a program or activity receiving or benefitting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(d) *Programs limited by Federal law.* In programs authorized by Federal statute or executive order that are designed especially for the handicapped, or for a particular class of handicapped persons, the exclusion of nonhandicapped or other classes of handicapped persons is not prohibited by this part.

§ 27.9 Assurance required.

(a) *General.* Each application for Federal financial assistance to carry out a program to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Future effect of assurances.* Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the recipient's assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a convenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part for so long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program.

§ 27.11 Remedial action, voluntary action and compliance planning.

(a) *Remedial action.* (1) If the responsible Departmental official finds that a qualified handicapped person has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and

(ii) With respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified handicapped persons.

(c) *Compliance planning.* (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)-(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems indentified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 27.13 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient that employs fifteen or more persons shall, within 90 days of the effective date of this regulation, forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change.

(b) *Adoption of complaint procedures.* A recipient that employs fifteen or more persons shall, within 180 days, adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 27.15 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

§ 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.

Subpart B—Employment Practices

§ 27.31 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped applicant for employment, or an employee shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner assuring that discrimination on the basis of handicap does not occur. A recipient may not limit, segregate, or classify applicants for employment or employees in any way that adversely affects their opportunities or status on the basis of handicap. This part does not prohibit the consideration of handicap in decisions affecting employment if the purpose and effect of the consideration is to remove or overcome impediments or the present effects of past impediments to the employment of handicapped persons.

(3) A recipient may not enter a contractual or other relationship that subjects qualified handicapped applicants for employment or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, or with organizations providing training and apprenticeship programs.

(b) *Specific activities.* A recipient shall not discriminate on the basis of handicap in:

(1) Recruiting, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promoting, awarding tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship,

professional meetings conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 27.33 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known handicaps of an otherwise qualified applicant for employment or employee unless the recipient can demonstrate to the responsible Departmental official that the accommodation would impose an undue hardship on the operations of its program.

(b) Reasonable accommodation includes (but is not limited to):

(1) Making facilities used by employees readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and similar actions; and

(3) The assignment of an employee who becomes handicapped and unable to perform his/her original duties to an alternative position with comparable pay.

(c) In determining, pursuant to paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program, including number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce;

(3) The nature and cost of the accommodation needed; and

(4) Its effect on program accomplishments, including safety.

(d) A recipient shall not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodations to the handicaps of the employee or applicant.

§ 27.35 Employment criteria.

(a) A recipient shall not make use of an employment test or other selection criterion that has an adverse impact or tends to have an adverse impact on handicapped persons, unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not have an adverse impact or do not tend to have an adverse impact on handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests that, when administered to an applicant for employment or an employee with impaired sensory, manual, or speaking skills, nonetheless accurately measure what they purport to measure.

§ 27.37 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient shall not conduct a preemployment medical examination or inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment medical examinations that are required by Federal law or regulation or inquiries into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action pursuant to § 27.11 (a) or (c), or when a recipient is taking affirmative action pursuant to section 505 of the Act (which relates to government procurement), the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient makes clear that the information requested is intended for use solely in connection with the remedial action obligations or its voluntary or affirmative actions efforts; and

(2) The recipient makes clear that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section prohibits a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, if:

(1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and

(2) The results of such an examination are used only in accordance with this part.

(d) Information obtained in accordance with this section shall be collected and maintained on separate forms and treated confidentially, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of handicapped persons and necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request, consistent with the Privacy Act of 1974, 5 U.S.C. 552a.

Subpart C—Program Accessibility—General

§ 27.61 Applicability.

This subpart applies to all programs of the Department of Transportation to which section 504 is applicable. Additional provisions with respect to certain specific programs of the Department are set forth in Subpart D. The provisions of this subpart should be interpreted in a manner that will make them consistent with the provisions of Subpart D. In the case of apparent conflict, the provisions of Subpart D shall prevail.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.63 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 27.65 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that, when viewed in the entirety, it is accessible to handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, alteration of existing facilities and construction of new facilities in accordance with the requirements of § 27.67(d) or any other methods that result in making its program or activity accessible to handicapped persons. In choosing among available methods for meeting the requirements of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Structural changes.* Where structural changes are necessary to make programs or activities in existing facilities meet the requirements of paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation unless otherwise provided in Subpart D.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop, and submit in duplicate to the cognizant operating administration providing Federal financial assistance, within one year of the effective date of this part, a transition plan listing the facilities and setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan and a list of the interested persons and organizations consulted shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify each facility required to be modified by this part. Facilities shall be listed even though the recipient contemplates requesting a waiver of the requirement to modify the facility;

(2) Identify physical obstacles in the listed facilities that limit the accessibility of its program or activity to handicapped persons;

(3) Describe the methods that will be used to make the listed facilities accessible;

(4) Describe how and the extent to which the surrounding areas will be made accessible;

(5) Specify the schedule for taking the steps necessary to achieve overall program accessibility and, if the time period of the transition plan is longer than three years, identify steps that will be taken during each year of the transition period; and

(6) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.67 New facilities and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; with respect to vehicles, unless otherwise provided in Subpart D, this requirement is effective for vehicles for which solicitations are issued or which are leased after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) When an existing vehicle is renovated substantially to prolong its life, the vehicle shall, to the maximum extent feasible, meet the requirements for a comparable new vehicle. Lesser renovations shall incorporate accessibility features for a comparable new vehicle when practicable and justified by the remaining life expectancy of the vehicle.

(d) *Accessibility standards.* Effective as of the effective date of this subpart, design, construction, or alteration of buildings or other fixed facilities in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings or other fixed facilities. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building or other fixed facilities is provided.

(1) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(2) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981; Amdt. 27-3, 51 FR 19017, May 23, 1986]

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

§ 27.71 Federal Aviation Administration—airports.

(a) *Fixed facilities; new terminals.* (1) Terminal facilities designed and constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed or constructed in accordance with the accessibility standards referenced in § 27.67(d) of this part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(2) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section. If this cannot be done, the standards in paragraph (a)(2) of this section prevail.

(2) In addition to the accessibility standards referenced in § 27.67(d) of this part, the following standards apply to new airport terminal facilities:

(i) *Airport terminal circulation and flow.* The basic terminal design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. It is also essential that the design, especially concerning the location of elevators, escalators, and similar devices, minimize any extra distance that wheel chair users must travel compared to nonhandicapped persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(ii) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet the ANSI standards.

(iii) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(iv) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(v) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by level entry boarding platforms and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for movement of freight that are available for enplaning and deplaning wheelchair users.

(vi) *Telephones.* Wherever there are public telephone centers in terminals, at least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(vii) *Teletypewriter.* Each airport shall ensure that there is sufficient teletypewriter (TTY) service to permit hearing-impaired persons to communicate readily with airline ticket agents and other personnel.

(viii) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal building entrance, separated from the main flow of traffic, and clearly marked, shall be made available for the loading and unloading of handicapped passengers from motor vehicles. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of automobiles onto a level surface suitable for wheeling and walking.

(ix) *Parking.* In addition to the requirements in the accessibility standards referenced in § 27.67(d) of this part the following requirements shall be met:

(A) Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between park areas and the terminal;

(B) Where multi-level parking is provided, ample and clearly marked space shall be reserved for ambulatory and semi-ambulatory handicapped persons on the level nearest the ticketing and boarding portion of the terminal facilities, and

(C) In multi-level parking areas, elevators, ramps, or other devices that can accommodate wheelchair users shall be easily available.

(x) *Waiting area/public space.* As the major public area of the airport terminal facility, the environment in the waiting area/public space should give the handicapped person confidence and security in using the facility. The space shall be designed to accommodate the handicapped providing clear direction about how to use all passenger facilities.

(xi) *Airport terminal information.* Airport terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters, or symbols, using lighting and color coding. Airport terminals shall also have facilities providing information orally.

(xii) *Public services.* Public service facilities such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities shall be designed in accordance with accessibility standards referenced in § 27.67(d) of this part.

(b) *Fixed facilities; existing terminals*—(1) *Structural changes.* Where structural changes are necessary to make existing air carrier terminals which are owned and operated by recipients of Federal financial assistance accessible to and usable by handicapped persons, such changes shall be made in accordance with the ANSI standards as soon as practicable, but in no event later than three years after the effective date of this part.

(2) *Ongoing renovation.* In terminals that are undergoing structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, curbs, and parking areas, recipients shall begin immediately to incorporate accessibility features.

(3) *Transition.* Where extensive structural changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it to the Federal Aviation Administration (FAA). Transition plans are reviewed and approved or disapproved by the FAA as expeditiously as possible after they are received.

(4) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided incident to enplaning and deplaning handicapped persons. Within three years from the effective date of this part, recipients operating terminals at air carrier airports that are not equipped with jetways or passenger lounges for boarding and unboarding shall assure that there are lifts, ramps, or other suitable devices, not normally used for movement of freight, are available for enplaning and deplaning wheelchair users.

(5) *Passenger services.* Recipients operating terminals at air carrier airports shall assure that there are provisions for assisting handicapped passengers upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(6) *Guide dogs.* Seeing eye and hearing guide dogs shall be permitted to accompany their owners and shall be accorded all the privileges of the passengers whom they accompany in regard to access to terminals and facilities.

[44 FR 31468, May 31, 1979, as amended by Amdt. 27-3, 51 FR 19017, May 23, 1986]

§ 27.73 Federal Railroad Administration-railroads.

(a) *Fixed facilities*—(1) *New facilities.* (i) Every fixed facility or part of a facility—including every station, terminal, building, or other facility—designed or constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed and constructed in accordance with the accessibility standards referenced in § 27.67(d) of this part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(1)(ii) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section. If this cannot be done, the standards in paragraph (a)(1)(ii) of this section will prevail.

(ii) In addition to the accessibility standards referenced in § 27.67(d) of this part the following standards also apply to rail facilities;

(A) *Station circulation and flow.* The basic station design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of elevators, escalators, and similar devices, shall minimize any extra distance that wheelchair users must travel, compared to nonhandicapped persons, to such ticket counters, baggage handling areas and boarding locations.

(B) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet ANSI standards.

(C) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(D) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(E) *Boarding platforms.* All boarding platforms that are located more than two feet above ground or present any other dangerous condition, shall be marked with a warning device consisting of a string of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms shall be coordinated with the vehicle design where possible in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Where level entry boarding is not provided, lifts, ramps or other suitable devices shall be available to permit boarding by wheelchair users.

(F) *Telephones.* At least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(G) *Teletypewriter.* Recipients shall make available a toll-free reservation and information number with teletypewriter (TTY) capabilities, to permit hearing-impaired persons using TTY equipment to readily obtain information or make reservations for any services provided by a recipient.

(H) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal entrance separated from the main flow of traffic and clearly marked shall be made available for the boarding and exiting of handicapped persons. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of vehicles onto a level surface suitable for wheeling or walking.

(I) *Parking.* Where parking facilities are provided, at least two spaces shall be set aside and identified for the exclusive use of handicapped persons. Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between parking areas and the terminal. Where multilevel parking is provided, ample space which is clearly marked shall be reserved for handicapped persons with limited mobility on the level which is most accessible to the ticketing and boarding portion of the terminal facilities; such level change shall be by elevator, ramp, or by other devices which can accommodate wheelchair users.

(J) *Waiting area/public space.* As the major public area of the rail facility, the environment in the waiting area/public space should give the handicapped persons confidence and security in using the facility. The space shall be designed to accommodate the handicapped by providing clear directions about how to use all passenger facilities.

(K) *Station information.* Station information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters or symbols using lighting and color coding. Stations shall also have facilities for giving information orally. Scheduling information shall be available in a tactile format or through the use of a toll-free telephone number.

(L) *Public services.* Public service facilities, such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities, shall be designed in accordance with accessibility standards referenced in § 27.67(d) of this part.

(2) *Existing facilities—Ongoing renovation.* (i) All recipients shall begin immediately to incorporate accessibility features in stations and terminals that are already undergoing structural changes involving entrances and exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, boarding platforms, curbs, and parking garages.

(ii) *Structural changes.* Existing stations shall be modified to ensure that the facilities, when viewed in their entirety, are readily accessible to and usable by handicapped persons.

(iii) *Scheduling of structural changes.* (A) Within five years from the effective date of this section, recipients shall make accessible no less than one station in each Standard Metropolitan Statistical Area (SMSA) served by the recipient. Where there is more than one station in an SMSA, recipients shall select the station with the greatest annual passenger volume for modification within five years.

(B) Within ten years of the effective date of this section, recipients shall make accessible all other stations in each SMSA.

(C) Within five years of the effective date of this section, recipients shall make accessible stations located outside of an SMSA and not located within 50 highway miles of an accessible station. Where there are two or more stations within 50 highway miles of one another, a recipient shall select the station with the greatest annual passenger volume for modification within five years.

(D) Within ten years of the effective date of this section, recipients shall make accessible all other stations located outside of an SMSA.

(iv) *Waiver procedure.* (A) Recipients may petition the Federal Railroad Administrator for a waiver from the requirement to make a particular station accessible under paragraph (a)(2)(iii) (B) and (D) of this section. Such petitions shall be submitted no later than six years after the effective date of this section.

(B) A request for a waiver shall be supported by a written justification to the Federal Railroad Administrator. The justification shall include a record of a community consultative process in the area served by the station for which a waiver is sought. This request shall include a transcript of a public hearing. Handicapped persons and organizations in the area concerned shall be involved in the consultative process.

(C) Factors that are applicable to the determination on a petition for waiver and the conditions that would apply to the waiver include, but are not limited to: (*1*) The utilization of the station; (*2*) the cost of making modifications to the station; (*3*) and the availability of alternative, accessible means of transportation for handicapped persons that meet the needs of those persons for efficient and timely service at a fare comparable to rail fare from the area served by the station to the nearest accessible station in each direction of travel.

(D) Within 30 days of the date the waiver request is filed with the FRA, representatives of the FRA will meet with representatives of the Interstate

Commerce Commission (ICC) to determine if the justification is adequate. The representatives will coordinate their efforts so that any changes requested by either FRA or ICC are consistent.

(E) If no agreement can be reached by the FRA and ICC on the adequacy of the justification within 60 days from the date the representatives first meet, the waiver request shall be denied.

(v) *Transition plan.* Where extensive changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it, in duplicate, to the Federal Railroad Administration (FRA).

(vi) *Approval of transition plan.* (A) Transition plans are reviewed and approved or disapproved as expeditiously as possible after they are received. Within 30 days from the date the plan is filed with the FRA, representatives of the FRA meet with representatives of the ICC to determine if the plan is adequate. The representatives coordinate their efforts so that any changes requested by either the FRA or the ICC are consistent.

(B) If no agreement can be reached by the FRA and the ICC within 60 days from the date the representatives first meet, the transition plan shall be disapproved.

(vii) *Existing danger.* Every existing facility and piece of equipment shall be free of conditions which pose a danger to the life or safety of handicapped persons. Upon discovery of such conditions, the danger shall be immediately eliminated and all necessary steps taken to protect the handicapped, or a particular category of handicapped persons, from harm during the period that the facility or equipment is being made safe.

(b) *Rail vehicles.* (1) Within five years from the effective date of this part, on each passenger train:

(i) At least one coach car shall be accessible;

(ii) Where sleeping cars are provided, at least one sleeping car shall be accessible; and

(iii) At least one car in which food service is available shall be accessible to handicapped persons, or they shall be provided food service where they are seated.

In cases where the only accessible car is first class, first class seating for handicapped persons shall be provided at coach fare.

(2) In order for a passenger car to be accessible to handicapped persons, the following shall be available:

(i) Space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or more wheelchairs to accommodate individuals who wish to sit in coach seats.

(ii) Accessible restrooms with wide doorways, bars to assist the individual in moving from wheelchair to toilet, low sinks, and other appropriate modifications. These restrooms should be large enough to accommodate wheelchairs.

(3) All new rail passenger vehicles for which solicitations are issued after the effective date of this part by recipients of Federal financial assistance shall be designed so as to be accessible to handicapped persons and shall display the international accessibility symbol at each entrance.

(c) *Rail passenger service.* (1) No recipient shall deny transportation to any person who meets the requirements of this regulation because that person cannot board a train without assistance, or use on-train facilities without assistance, except as provided in this regulation.

(2) Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required under this part to be transported by the recipient. Handicapped persons requiring the assistance of an attendant shall include those who cannot take care of any one of their fundamental personal needs.

(3) All recipients at stations, except flag stops and closed stations, shall, on advance notice of 12 hours or more, provide assistance to handicapped persons, except that those handicapped

persons who require the services of an attendant shall give advance notice of at least 24 hours. Such assistance shall include, but is not limited to, advance boarding and assisting handicapped persons in moving from station platform onto the train and to a seat. The recipient shall provide the same assistance to handicapped persons as they leave the train or board another train in the process of changing trains. Recipients shall provide assistance upon request to handicapped persons in the use of station facilities and in the handling of baggage.

(4) In all open stations, there shall be prominently displayed a notice stating the location of the recipient's representative or agent who is responsible for providing assistance to handicapped persons. Recipients shall publish in their schedules a notice of those closed stations and flag stops at which assistance cannot be provided to handicapped persons.

(5) Assistance to handicapped persons in the use of on-train facilities shall be provided as follows:

(i) *General assistance.* Recipients shall provide assistance to handicapped persons in moving to and from accommodations, including assistance in moving to and from wheelchairs.

(ii) *Restroom facilities.* All recipients shall, upon request, provide assistance to handicapped persons needing assistance in gaining access to rest and washroom facilities.

(iii) *Sleeping car service.* All recipients on all trains where sleeping car service is provided shall, upon request, provide assistance in gaining access to the facilities on various accommodations, such as roomette, bedroom, or compartment.

(iv) *Dining and lounge car service.* Where dining cars, food service cars, or lounge cars are inaccessible to handicapped persons, all recipients shall, upon request, provide meal, beverage, and snack service to handicapped persons needing such service in their accommodations.

(6) *Assistance with wheelchairs, crutches, walkers, and canes.* All recipients shall provide coach or sleeping car space to store, and shall assist in storing, such orthopedic aids as wheelchairs, walkers, crutches, and canes. These orthopedic aids shall be stored on the same coach or sleeping car in which the handicapped person travels.

(7) *Notice of assistance available provided in the use of on-board facilities.* All recipients shall, on all coaches, sleeping cars, dining cars, food service cars, and lounge cars, permanently display a notice stating where and from whom assistance in the use of facilities of various cars may be obtained.

(8) *Bedridden and stretcher-bound passengers.* (i) Where equipment is designed or modified to accept bedridden or stretcher-bound passengers without unreasonable delay, the recipient shall provide assistance in the boarding of bedridden or stretcher-bound persons into sleeping quarters. Accessibility to coaches for these persons is not required.

(ii) Advance notification of 24 hours or more is mandatory in order to ensure provision of assistance to bedridden or stretcher-bound passengers. For the purpose of this section, assistance need not necessarily include placing the bedridden or stretcher-bound person into the compartment.

(9) *Passengers requiring life support equipment.* Recipients shall not be required to transport persons who are dependent upon life support equipment needing power from the vehicle.

(10) *Guide dogs.* Seeing eye dogs and hearing guide dogs shall be permitted to accompany their owners on all passenger trains, and shall be permitted in coach, sleeping, and dining cars.

(11) *Services to deaf and blind passengers.* Recipients shall provide assistance to deaf and/or blind passengers, on request, by advising them of station stops.

(12) Recipients shall notify the public that they provide services that facilitate travel by handicapped persons.

(13) Recipients shall provide training to their employees sufficient to enable them to carry out the recipients' responsibilities under this section.

[44 FR 31468, May 31, 1979, as amended by Amdt. 27-3, 51 FR 19017, May 23, 1986]

§ 27.75 Federal Highway Administration—highways.

(a) *New facilities*—(1) *Highway rest area facilities.* All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the accessibility standards referenced in § 27.67(d) of this part.

(2) *Curb cuts.* All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) *Pedestrian over-passes, under-passes and ramps.* Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to handicapped persons, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) *Existing facilities—Rest area facilities.* Rest area facilities on Interstate highways shall be made accessible to handicapped persons, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.

[44 FR 31468, May 31, 1979, as amended by Amdt. 27-3, 51 FR 19017, May 23, 1986]

APPENDIX A TO SUBPART D—ADVISORY INFORMATION ON PROGRAMMING FOR HANDICAPPED PERSONS

Pursuant to the planning requirements established for urbanized areas in title 23 and the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation Administration (UMTA) and the Federal Highway Administration (FHWA) have previously jointly issued regulations (23 CFR Part 450 and 49 CFR Part 613) that require the urban transportation planning process to include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons. A supplementary statement which provides advisory information on the special efforts planning requirements is found in Appendix B to this part.

As a result of special efforts in planning, projects designed to benefit handicapped persons, including projects designed specifically to benefit wheelchair users and those with semiambulatory capabilities, should appear in the annual element of transportation improvement programs submitted to UMTA. (Whenever the term "handicapped persons" is used, elderly persons who are handicapped by reason of age are intended to be included.) The term "projects" is meant to include significant features of larger projects (e.g., level-change mechanisms on full-size buses), as well as specially designed services and improvements in the coordination of existing services and resources. "Projects" includes payment of current operating costs of previously purchased wheelchair-accessible equipment and includes payment of expenses associated with indirect methods of providing service, such as subsidies to reduce taxi fares for wheelchair users or trip coupons provided directly to wheelchair users.

Projects funded by UMTA under section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended (UMT Act) may be identified as deriving from local special efforts to meet the needs of wheelchair users and semiambulatory persons only to the extent that the following four conditions are met: (1) The service and vehicles serve wheelchair users and semiambulatory persons; (2) the service meets a priority need identified in this planning process; (3) the service is not restricted to a particularized organizational or institutional clientele; and (4) any fares charged are comparable to those which are charged on standard transit buses for trips of similar length.

The coordination of existing transportation available for wheelchair users and semiambulatory persons, and funds which support the provision or purchase of such transportation, provided by the transit operators, governmental health and welfare agencies, and private nonprofit organizations may be identified as a project deriving from local special efforts. If the service and resources thus coordinated meet the four conditions for eligible section 16(b)(2) services (see above) and appear in the transportation improvement program, then those services and resources themselves may be identified as deriving from local special efforts.

Transportation improvement programs submitted to UMTA should identify those projects that result from the wheelchair user aspect of the handicapped special efforts requirement. Compliance with the regulation of the General Services Administration (GSA) on Accommodations for the Physically Handicapped (41 CFR Subpart 101-19.6) should not be identified as deriving from local special efforts. On the other hand, efforts which go beyond what GSA's regulation requires (e.g., making an existing subway station wheelchair accessible when GSA's regulation does not so require) may be part of the local special effort.

UMTA will not specify a program design to meet the "special efforts" requirement. However, the following examples are illustrative of a level of effort that will be deemed to satisfy this requirement with respect to wheelchair users and semiambulatory persons:

1. A program for wheelchair users and semiambulatory handicapped persons that will involve the expenditure of an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area received in FY 83 under section 5 of the UMT Act. Recipients in nonurbanized areas that receive assistance under section 3 but not section 5 cannot, of course, use this first illustration. Although their certifications would be submitted to UMTA, such recipients should be guided by the requirements applicable specifically to section 18 recipients (see 49 CFR 27.77(a)(2) and 23 CFR Part 825, Appendix A, Para. 5(b)). These "3.5 percent funds" may be derived from sources other than section 5. The term "average" permits lower expenditure years to be balanced by higher expenditure years but does not permit an initial delay in implementing projects. Projects that qualify as local "special efforts" for wheelchair users and other semiambulatory persons under the initial paragraphs of this advisory information would be counted in computing the 3.5 percent.

For areas that choose to offer specialized service, there is, of course, no obligation to make that service available to persons who can use the regular transit system, although localities certainly may offer the service to such persons.

2. Purchase of only wheelchair-accessible new fixed route equipment until one-half of the fleet is accessible, or, in the alternative, provision of a substitute service that would provide comparable coverage and service levels.

3. A system, of any design, that would assure that every wheelchair user or semiambulatory person in the urbanized area would have public transportation available if requested for 10 round-trips per week at fares comparable to those which are charged on standard transit buses for trips of similar length, within the service area of the public transportation authority. The system could, for example, provide trip coupons to individuals who would then purchase the needed service.

These examples are illustrative of a level of effort that will satisfy the "special efforts" requirement. They are not regulatory standards or minimums, neither do they exhaust all valid approaches. They are meant to guide the development of local public transportation opportunities for wheelchair users and semiambulatory persons that in fact meet a significant fraction of the identified need within a reasonable time.

While the focus of the guidance in this appendix is on programming, reasonable progress in implementing programmed projects and in ensuring actual service is essential to meeting the "special efforts" requirement.

[46 FR 37492, July 20, 1981, as amended by Amdt. 27-2, 50 FR 13040, Apr. 2, 1985]

Subpart E—Mass Transportation Services for Handicapped Persons

SOURCE: Amdt. 27-3, 51 FR 19018, May 23, 1986, unless otherwise noted.

EDITORIAL NOTE: The information collection requirements contained in Subpart E have been approved by the Office of Management and Budget under control number 2132-0530.

§ 27.81 Program requirement.

Except as provided in § 27.91(a) of this subpart, each recipient of UMTA financial assistance under sections 3, 5, 9, or 9A of the UMT Act, which provides transportation services to the general public by bus, shall establish a program meeting the requirements of this subpart. The program shall ensure provision of service to handicapped persons at the full performance level required by § 27.95 of this subpart within the time called for by that section. The program shall include milestones describing the progress the recipient shall make each year until it achieves the full performance level.

§ 27.83 Public participation and coordination.

(a) Each recipient required to submit a program under this subpart shall develop its program through a public participation process that includes, as a minimum, the following steps:

(1) The recipient shall consult, as early as possible in the planning process, with handicapped persons and groups representing them, transportation and social service organizations, concerned state and local officials, and the Metropolitan Planning Organization (MPO). This consultation shall concern the needs for service to handicapped persons in the area served by the recipient, any weaknesses or problems in present service or plans for service, and the types and characteristics of service to be provided under the recipient's program. In connection with this consultation, all cost estimates, plans, working papers, and other information pertaining to the recipient's program planning and service for handicapped persons shall be made available to all interested persons.

(2) The recipient shall provide a public comment period of at least 60 days upon the recipient's proposed program.

(3) The recipient shall hold at least one public hearing, to take place during the public comment period. Notice of the hearing shall be provided no fewer than 30 days before its scheduled date. The hearing shall be held in a facility accessible to handicapped persons, and the recipient shall take appropriate steps to facilitate the participation of handicapped persons in the hearing, including persons with impaired vision or hearing.

(4) The recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use.

(b) The recipient shall coordinate the development of its program with the MPO and submit its proposed program to the MPO for comment at the same time as the proposed program is made available for public comment.

(c) The recipient shall make efforts to accommodate, but is not required to adopt, significant comments on its proposed program made by the MPO and by the public, as part of the public participation and coordination process. The recipient shall make available to the public, no later than the time it adopts a program for transmittal to UMTA, a response to significant comments. This response shall include the recipient's reasons for not accommodating significant comments from the MPO and the public.

(d) All recipients subject to the program requirement of § 27.81 shall provide a mechanism for continuing public participation in the development and operation of its system of transportation for handicapped persons. The mechanism shall ensure consultation, with respect to planning, implementation, and operation, with handicapped persons, available advocacy groups of handicapped persons, public and private social service agencies, public and private operators of transportation services for handicapped persons, and other interested persons.

(e) Before making significant changes to its program, the recipient shall follow the public participation process outlined in paragraphs (a) through (c) of this section and secure UMTA approval of the altered program as provided in § 27.85 of this subpart for initial program submissions.

§ 27.85 Submission and review of program.

(a) Each recipient required to establish a program under § 27.81 of this subpart shall submit the following materials to the appropriate UMTA Regional Administrator within 12 months of the effective date of this subpart:

(1) A copy of the program;

(2) The comments of the public (including handicapped persons and the MPO) on the program, together with the recipient's responses to these comments, or summaries thereof;

(3) Documentation of the projected costs of implementing the recipient's program, the costs of alternatives considered by the recipient, the projected amounts of the limitation on required expenditures for the recipient, and the rationale for any reduction of service quality below a level meeting fully the service criteria of § 27.95 (b), (c), or (d), as applicable.

(b) UMTA shall complete review of each recipient's program submission within 120 days of receiving it. UMTA may extend this review period; if UMTA does so, UMTA shall send the recipient a letter, before the end of the 120-day period, explaining the reasons for the extension and providing an estimated date for the completion of review.

(c) After UMTA has completed its review on each recipient's program submission, it shall notify the recipient, in writing, that the program is either approved as submitted, requires certain specified changes in order to be approved, or is disapproved. If the program is not approved as submitted, the notification shall set a time, not less than 30 nor more than 90 days from the date of the notification, within which the recipient shall submit a modified program to UMTA for approval. UMTA may condition approval of the resubmitted program on specified changes to its content or additional public participation activities.

§ 27.87 Provision of service.

(a) Each recipient shall, at all times, provide the service called for by its program, as approved by UMTA, or under its certification pursuant to § 27.91, as applicable, to all eligible handicapped persons.

(b) The recipient's obligation to ensure the provision of such service includes, but is not limited to, the following:

(1) Ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition;

(2) Ensuring that sufficient spare vehicles are available to maintain the levels of service called for in the program, or as provided under the § 27.91 certification;

(3) Ensuring that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat handicapped users of the service in a courteous and respectful way; and

(4) Ensuring that adequate assistance and information concerning the use of the service is available to handicapped persons, including those with vision or hearing impairments. This obligation includes making adequate communications capacity available to enable users to obtain information about and to schedule service. In the case of a scheduled accessible bus system, this obligation also includes providing information on bus schedules and other sources of information about the service concerning which runs are made with accessible buses.

(5) Ensuring that service is provided in a timely manner, in accordance with scheduled pickup times.

(c) Notwithstanding the provision of any special service to handicapped persons, a recipient shall not, on the basis of handicap, deny to any handicapped person the opportunity to use the recipient's system of mass transportation for the general public, if the handicapped person is capable of using that system. Nor shall a recipient otherwise discriminate against a handicapped person in connection with the provision of its transportation service for the general public.

(d) In the time between the effective date of this subpart and the recipient's achievement of the full performance level established by § 27.95, service at least at the level provided pursuant to the recipient's certification under former § 27.77 of this part (46 FR 37488; July 20, 1981), as amended, shall remain in effect.

§ 27.89 Monitoring.

(a) In connection with the triennial section 9 review and evaluation of the recipient's activities conducted by UMTA under 49 U.S.C. 1607a(g)(2), UMTA shall review and evaluate compliance of the recipient with this subpart and its approved program for providing transportation services to handicapped persons.

(b) With respect to any recipient required to submit a program under § 27.81 of this subpart, but which is not subject to a section 9 triennial review audit, UMTA shall conduct a triennial review and evaluation of the recipient's compliance with this subpart and its approved program for providing transportation services to handicapped persons.

(c) If the recipient has fallen behind its approved schedule for implementing service to handicapped persons or has fallen below its full performance level for that service, the recipient shall submit a report to the appropriate UMTA Regional Administrator on the annual anniversary date of the approval of its program. The report shall describe the problem or delay experienced, explain the reasons for it, and set forth the corrective action the recipient has taken or is taking to ensure that its approved implementation schedule or its full performance level is met.

§ 27.91 Requirements for small recipients.

(a) This section applies to all recipients which provide service to the general public only in areas of 50,000 population or less. Recipients in this category shall follow the requirements of this section instead of the other requirements of this subpart, except that § 27.87 shall apply to recipients in this category.

(b) Within 12 months of the effective date of this subpart, each recipient shall certify that special efforts are being made in its service area to provide transportation that handicapped persons, unable to use the recipient's service for the general public, can use. This transportation service shall be reasonable in comparison to the service provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time. Recipients who have a current certification to this effect are not required to recertify.

(c) Within nine months of the effective date of this subpart, each recipient shall ensure that handicapped persons and groups representing them have adequate notice of and opportunity to comment on the present and proposed activities of the recipient for achieving compliance with the requirements of paragraph (b) of this section. This notice and opportunity for comment shall take place before the submission of the certification required by paragraph (b) of this section and the report required by paragraph (d) of this section. Each recipient shall also ensure that there is adequate notice and the opportunity for public comment on any subsequent significant changes to its service for handicapped persons.

(d) Within 12 months of the effective date of this subpart, each recipient shall submit a status report including:

(1) A description of the service currently being provided to handicapped persons, as compared to the service for the general public;

(2) Copies or a summary of the comments of handicapped persons received in response to the opportunity for comment;

(3) A statement of any plans to modify the service significantly; and

(4) A statement of the resources devoted to the service for handicapped persons.

(e) Each recipient shall submit update reports concerning its service for handicapped persons. The recipient shall provide such a report every three years, on a schedule determined by UMTA. Each report will include the following information:

(1) A description of the service currently provided to handicapped persons, as compared to the service for the general public;

(2) Any significant modifications made in the service since the previous report, or planned for the next three-year period;

(3) Copies of a summary of the comments on any significant changes made in the service since the previous report; and

(4) A description of the resources that have been devoted to service for handicapped persons each year since the previous report and that are planned to be devoted to this purpose in each of the next three years.

(f) All certifications and reports under this section shall be submitted to the designated state section 18 agency or, for recipients who do not receive section 18 funds, to the appropriate UMTA Regional Administrator.

§ 27.93 Multi-recipient areas.

(a) This section applies to any multi-recipient area; i.e., an urbanized area including two or more recipients required to establish a program under § 27.81 of this subpart.

(b) The recipients in a multi-recipient area may enter into a compact for purposes of compliance with this subpart. The compact shall meet the following standards:

(1) The compact shall establish a cooperative mechanism among the recipients to ensure the provision of combined and/or coordinated service to handicapped persons that meet all requirements of this subpart.

(2) The compact shall ensure the provision and sharing of funding adequate to provide such service.

(3) The compact shall include a reasonable dispute resolution mechanism concerning funding and service matters.

(4) The compact shall be a formal written document, signed by all participating recipients.

(c) In order for UMTA to recognize the compact as the means through which recipients in the multi-recipient area will comply with this subpart, the members of a compact shall submit a copy of the signed compact to the appropriate UMTA Regional Administrator within six months of the effective date of this subpart. Following such timely submission, UMTA shall acknowledge receipt of the compact within 30 days and then regard the members of the compact as if they constitute a single recipient for purposes of all requirements of this subpart.

(d) The deadline for the submission of a program under § 27.85 by a multi-recipient area compact shall be 12 months from the date on which the copy of the compact is acknowledged by UMTA under paragraph (c) of this section.

§ 27.95 Full performance level.

(a) *Scope and timing.* Each recipient shall provide transportation service to handicapped persons at the full performance level. The full performance level is defined as meeting the criteria set forth in either paragraph (b), paragraph (c), or paragraph (d) of this section, subject to the limit on required expenditures provided for in § 27.97 of this subpart. The recipient shall meet this requirement as soon as reasonably feasible, as determined by UMTA, but in any case within six years of the initial determination by UMTA concerning the approval of its program.

(b) *Criteria for special service systems.* The following minimum service criteria apply to special service systems:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service.

(2) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the special service.

(4) *Fares.* The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the recipient's bus service for the general public.

(5) *Hours and days of service.* The special service shall be available throughout the same hours of days as the recipient's bus service for the general public.

(6) *Service area.* The special service shall be available throughout the circumferential service area in which the recipient provides bus service (exclusive of extended express or commuter bus service) to the general public. The recipient shall also ensure that service to points outside this service area served by the recipient's extended express or commuter bus service shall be available to handicapped persons.

(c) *Criteria for accessible bus systems.* The following minimum service criteria apply to accessible bus systems:

(1) *Number of buses.* The recipient shall operate on the street a number of accessible buses sufficient to meet the other service criteria of paragraph (c)(2) and/or (3) of this section, as applicable.

(2) *Criteria for scheduled accessible bus systems*—(i) *Hours and days of service.* Scheduled accessible bus serv-

ice shall be available throughout the same hours and days as the recipient's bus service for the general public. The service shall be provided at reasonable intervals that make practicable the ready use of the accessible bus service by handicapped persons.

(ii) *Service area.* Accessible bus service shall be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the planning and public participation process set forth in § 27.83.

(iii) *Fares.* The fare for a trip charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(3) *Criteria for on-call accessible bus service*—(i) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's on-call accessible bus service.

(ii) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(iii) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the on-call accessible bus service.

(iv) *Fares.* The fare charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(v) *Hours and days of service.* On-call accessible bus service shall be available throughout the same days and hours as the recipient's bus service for the general public.

(vi) *Service area.* On-call accessible bus service, including all buses needed to complete each handicapped person's trip, shall be provided, upon request, on all the recipient's bus routes.

(d) *Criteria for mixed systems.* The service criteria of paragraphs (b) and (c) of this section apply to the special service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times, in which each operates. The recipient shall ensure that the accessible bus and special service components of the mixed system are coordinated (including transfers between the components) so that inconvenience to handicapped users of the mixed system is minimized.

(e) *Services by other agencies and modes of transportation.* In meeting the service criteria, the recipient may use services provided, and funded, by agencies other than the recipient, and services delivered through other modes of transportation, if the services provided by the other agencies or through other modes of service are part of a system of transportation coordinated by the recipient.

§ 27.97 Limit on required expenditures.

(a) *Calculation.* To determine its limit on required expenditures for a given fiscal year, the recipient shall calculate 3.0 percent of its total annual average operating costs (as reported to UMTA in compliance with requirements under section 15 of the Urban Mass Transportation Act, as amended) it reasonably expects to incur in the current fiscal year and did incur during the previous two fiscal years.

(b) *Effect.* A recipient is not required, in any fiscal year, to spend more than the amount of its limit on required expenditures for that fiscal year in order to comply with this subpart, even if, as a result, the recipient cannot provide service to handicapped persons that fully meets the service criteria specified by § 27.95 (b), (c) or (d), as applicable. Each recipient shall, in all cases, comply with § 27.95 (b)(1) or (c)(3)(i), as applicable.

(c) *Consultation.* In determining how to reduce service levels in order to avoid exceeding the limit on required expenditures, the recipient shall consult with handicapped persons and the public through the public participation mechanism established under § 27.83(d) of this subpart.

best copy available

pages tightly bound

§ 27.99 Eligible expenses.

(a) Only expenditures by the recipient of its own funds, specifically to comply with the requirements of this subpart, are eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(b) The expenditures by the recipient that may be counted in determining whether the recipient has exceeded its limitation on required expenditures are limited to those listed in this paragraph. No other expenditures may be counted for this purpose.

(1) Capital and operating costs for special services systems;

(2) Incremental capital and operating costs for accessible bus systems;

(3) Administrative costs directly attributable to coordinating services for handicapped persons.

(4) Incremental costs of training the recipient's personnel to provide services to handicapped persons.

(5) [Reserved]

(6) Incremental costs of construction or modification of facilities to enable handicapped persons to transfer readily between accessible bus or special service systems and accessible rail systems, provided that such construction or modification is part of the recipient's program approved under § 27.85 of this subpart.

(c) With respect to service provided to both handicapped persons eligible to receive service under this subpart and to other persons, only expenditures attributable to the transportation of the eligible handicapped persons may be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(d) Expenditures for the purchase of vehicles and other major capital expenditures shall be annualized over the expected useful life of the item. Only the portion of the expenditure attributable to a given fiscal year may be counted in determining the recipient's eligible expenses for that year.

[Amdt. 27-3, 51 FR 19018, May 23, 1986, as amended by Amdt. 27-4, 54 FR 31041, July 26, 1989]

§ 27.101 Technical exemptions.

(a) A recipient may request a technical exemption from any provision of this subpart. Such a request shall be made in writing, to the Administrator of the Urban Mass Transportation Administration, through the appropriate UMTA Regional Administrator. The request may be made in conjunction with the submission of the recipient's program under § 27.85 of this subpart.

(b) The Administrator may grant the request if—

(1) The recipient has demonstrated that special local circumstances, not contemplated or taken into account in the rulemaking establishing this subpart, make it unduly burdensome or unreasonable for the recipient to comply with a generally applicable requirement; and

(2) The recipient has agreed to take action which the Administrator determines will result in substantial compliance with this subpart despite the grant of a technical exemption from a particular provision of this subpart.

(c) The Administrator may grant, partially grant, or deny any request for a technical exemption. The Administrator may also place any reasonable conditions upon the grant of a technical exemption. The Administrator's actions are subject to the concurrence of the Assistant Secretary for Policy and International Affairs.

§ 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

(a) If a state has elected to administer UMTA's section 5, 9, and 9A programs for UMTA, the recipient shall submit the materials required by §§ 27.85, 27.89(c), 27.91(f), and 27.93(c) of this subpart to the designated state agency rather than to UMTA. The designated state agency shall act for UMTA to review and approve, as required, the materials submitted by the recipients. The time limits and procedures imposed on UMTA in these provisions shall apply to the designated state agencies.

(b) After the designated state agency has approved the recipient's program under § 27.85, it shall certify to UMTA that the recipient is in compliance with this subpart. This certification is due to UMTA within 30 days of the approval of the program and it shall state whether the recipient has entered into a compact under § 27.93.

APPENDIX TO SUBPART E

The material in this appendix describes the Department's interpretation of the provisions of this regulation. (For additional information concerning these provisions, please refer to the preamble published with this regulation in the FEDERAL REGISTER.) This material may be supplemented or modified, in the future, by additional guidance from the Department, including UMTA, as questions arise during the implementation of the regulation.

Section 27.81 Program requirement.

This section directs UMTA recipients who receive funds under sections 3, 5, 9, or 9A; serve the general public; and operate a bus system in an urbanized area to establish a program, consistent with this regulation's requirements, for providing transportation services to handicapped persons. Each of the qualifications of this requirement is intended and important.

Recipients receiving funds only under another section (e.g., section 8 planning funds; section 18 small urban and rural transportation program funds) do not need to create a program.

Recipients who do not provide federally-assisted transportation services at all (e.g., an MPO that receives section 9 funds but merely passes them through to a transit provider) are not required to establish a program. "Providing transportation services," in this context, is not limited to actually operating a fleet of the recipient's own vehicles with the recipient's own personnel. For example, private provider may operate federally-assisted service (e.g., as part of a private-sector participation initiative). The recipient would be providing transportation service for purposes of this section, and be responsible for ensuring that service to handicapped persons that fully meets regulatory requirements is provided, directly or through the private provider.

Only recipients providing transportation services to the general public (as distinct from providing services only to elderly or handicapped persons) are required to establish a program. Even though section 16(b)(2) funds are taken from section 3 appropriations, agencies receiving funds solely under this program are not covered by this section's requirements.

Recipients under other UMTA funding programs, if they serve only elderly and/or handicapped persons, are exempted from this requirement for the same reason. Also, recipients who do not provide transit services "by bus" (i.e., rail-only operators) are not covered by this requirement.

Section 27.91(a) creates a separate, simpler system through which section 18 recipients and other recipients in non-urbanized areas (even though they receive some section 3,5,9, or 9A funds) will comply with the requirements of this subpart. That section, and not § 27.81, applies to recipients providing service only in areas of less than 50,000 population.

The recipient's program must provide for meeting the full performance level for services to handicapped persons within the phase-in period provided for by § 27.95. The program must include "milestones": statements of the progress a recipient will make each year toward the full performance level.

For example, a recipient planning to comply by making its buses accessible would set forth how many accessible buses it would have by the end of year one, year two, etc., and to what degree it would meet each of the various service criteria at each stage. Similar items would be presented for other needed tasks, such as driver training, structural improvements to facilities, or information services. In its review of recipients' programs, UMTA will consider whether the milestones are realistic and provide for an appropriately phased build-up to the full performance level.

These milestones are very important, and recipients should think them out very carefully. The milestones in a recipient's program, once they are approved by UMTA, became the benchmarks against which the recipient's compliance is evaluated during the phase-in period. That is, the milestones to which a recipient commits itself during the phase-in period, like the full performance level subsequently, are the levels of performance that the recipient must meet to be considered in compliance.

The recipient has to include other information in its submission, along with the program itself. Much of the required information is listed in § 27.85. Other material that should be submitted, if applicable, concerns the continuing public participation mechanism, the criteria and procedure for determining eligibility, and accessible bus system routing and scheduling.

Section 27.83 Public participation and coordination.

The requirements for this section apply only to those recipients which must submit a program, since the section mostly pertains to the public participation and coordination process involved with preparing and adopting a program. The requirements of this section are minimum requirements. Recipients may go beyond them (e.g., a comment period longer than 60 days).

Subparagraph (a)(1) requires recipients to consult, as early as possible in the planning process, with interested people and groups. The idea of early consultation is important. Handicapped persons and groups, transportation and social services agencies, state and local officials, and the Metropolitan Planning Organization (MPO) should be regarded as partners in the planning process from the outset, not simply as commenters upon a proposed program that is already fully developed by the recipient.

The recipient's consultation should deal with the entire spectrum of concerns involved in planning service for handicapped individuals. Subsection (a) (1) mentions specifically service needs, weaknesses or problems in present service or existing plans for service, and the types and characteristics of service to be provided under the recipient's program.

Some recipients may already have a public participation mechanism in place, such as an advisory committee. The recipient may use such an existing mechanism. However, the recipient should ensure that all relevant parties have the opportunity to be included in the consultation process, even if they have not regularly participated in the advisory committee. For example, a recipient may have an advisory committee with membership drawn from several, but not all, organizations concerned with disability issues in the area, but in which the MPO is not normally represented. The recipient could base its consultation required by this subparagraph on the advisory committee, being sure that members of the additional organizations of disabled persons, social service agencies, and the MPO also were consulted and had the opportunity to participate.

The last sentence of subparagraph (a)(1) provides that cost estimates, plans, working papers and other information pertaining to the recipient's program and service for handicapped persons must be made available to all interested individuals and groups. In order to participate constructively in the planning process, those parties with whom the recipient is working need to have access to the information available to and the thinking of members of the recipient's staff. Information relevant to service cannot be viewed as "classified" or withheld from interested persons. This requirement also applies to the continuing public participation process (e.g., relevant information must be provided to an advisory committee).

In the remainder of this section, there are serveral references to the recipient's "proposed program." A proposed program is a document that the recipient has developed through its planning process. It should reflect the view of the recipient concerning such key subjects as the type and characteristics of service, schedule for implementing the service, and the funding of the service. The proposed program should not be merely a general request for views or represent an immutable decision by the recipient on what it will provide. The proposal should be sufficiently thorough and detailed to permit commenters and speakers at the public hearing to make informed criticisms and suggestions for improving the recipient's plans.

Subparagraph (a)(2) requires the recipient to provide a public comment period of at least 60 days on the proposed program. During the 60-day comment period, subparagraph (a)(3) provides that the recipient shall hold at least one public hearing. Notice of the hearing must be provided at least 30 days before the date on which the hearing is scheduled. The recipient could, for example, in notifying the public of the comment period, set a date, at least 30 days later, for the hearing, thereby avoiding the necessity for a second notice.

All hearings must be held in an accessible facility, and, if it is reasonably anticipated that persons with vision or hearing impairments will participate in the hearing, the recipient must take appropriate steps to facilitate their participation. For example, the recipient would have to ensure that an interpreter for deaf persons, or an individual to help communicate information contained on charts, graphs, or other visual aids to blind persons, was present at the hearing. The recipient should also select a time and place for the hearing that maximizes convenience to handicapped persons.

The regulation does not require that the public hearing involved be dedicated solely to the recipient's proposed program. Adequate time should be provided to ensure that all interested parties who wish to participate in the hearing have the opportunity to do so. The recipient must ensure that participation concerning the recipient's proposed program is not deterred by such techniques as the placement of its discussion at the end of a lengthy and time-consuming agenda. The program need not be the only, but should be the primary, matter discussed at any hearing held to meet the requirements of this section.

Subparagraph (a)(4) provides that the recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use. This implies notice being given in print (i.e., notices, placards in buses, newspaper advertisments, etc.) and by oral means (e.g., radio spots). For written materials other than notices of the comment period and the hearing, such as program documents and supporting information, the recipient should ensure that there are means of assisting visually handicapped individuals in learning the contents of these materials. It should be emphasized that this does not mean the recipient's personnel necessarily have to be used for this purpose. The recipient could also work with local voluntary or social service organizations to ensure that this service is provided.

Paragraph (b) requires the recipient to coordinate the development of its program with the MPO as well as to submit the proposed program to the MPO for comment at the same time as it is submitted to the public. The MPO, and concerned state and local governments, are intended to work with the recipient throughout the planning and implementation of the program.

Paragraph (c) of this section is the so-called "accommodate or explain" requirement. It should be emphasized that this paragraph does not require a recipient to make a point-by-point response to every comment. Nor does it require a recipient to agree with or adopt any or all comments it has received. The recipient is required to respond to "significant" comments it receives. That is, the recipient should respond to comments raising important substantive issues about the proposed program. Nonsubstantive or trivial comments need not receive responses.

Recipients' responses to comments may be relatively brief, so long as they give cogent reasons for the recipient's decision not to adopt a particular comment, to make a change requested by a comment, or to respond to a concern expressed by a commenter in a way different from that a commenter suggested.

The recipient may respond to comments in a variety of ways, such as letters to commenters, a preamble to the final program submitted to UMTA and made available to the public, or a separate document made available to all interested commenters and other members of the public. This document or documents should make clear to the public and to UMTA which commenters (and/or categories of commenters, in the case of individuals) made certain comments and the reasons for the recipient's responses.

Paragraph (d) concerns continuing public participation. This paragraph is not, as such, a requirement for an advisory committee. The recipient, as part of its program, may decide upon a mechanism to assure continuing public participation other than an advisory committee. The adequacy of any such mechanism would, of course, be reviewed by UMTA as part of its review of the recipient's program submission.

In setting up its advisory committee or other mechanism, the recipient should ensure its mechanism is widely representative of groups, interests and points of view on its service. Sharing of all relevant information is extremely important. An advisory committee or other public participation mechanism is of little use—and is inconsistent with the intent of this regulation—if its members are kept in the dark and their recommendations are ignored.

However, the views of the advisory committee or other continuing public participation mechanism are not required to be more than advice or recommendations. The rule does not require that the recipient adopt the suggestions of the participants in the process, or that an advisory committee be given veto or "sign-off" authority. Recipients may provide for stronger or more extensive roles for the participants in the continuing public participation process than the rule requires, however.

Paragraph (e) requires the recipient to follow the same public participation process for significant changes to its program as in the adoption of its initial program submitted to UMTA. The intent of this requirement is to ensure that interested persons and groups have the same opportunity to participate when the recipient makes significant changes in its program as when the initial program is put together. A re-run of the public participation process in this situation would not postpone the time at which the recipient is responsible for meeting the full performance level of § 27.95, however.

The Department intends this requirement to apply only to major alterations in the scope or direction of the recipient's program and service. It would apply, for example, if the recipient, having adopted, in its original program, a transit authority-operated paratransit system, decided to change to an accessible bus system. Even if the recipient was not changing the mode of delivering transit services to handicapped persons, the requirement could apply in the case of a major cutback or realignment of its existing service.

Recipients would not have to renew the public participation process in the case of fine tuning of or routine adjustments to service. (The recipient would have to consult through the continuing public participation mechanism on such changes, however.) If the recipient is in doubt about whether or not it should renew the public participation process of paragraph (a) through (c), the recipient should consult the UMTA Regional Office for guidance.

Section 27.85 Submission and review of program.

Paragraph (a) of this section directs all UMTA recipients who must create a program under § 27.81 to submit certain materials to the appropriate UMTA Regional Administrator for review and approval within 12 months of the effective date of this rule. Timely performance of this duty is a condition of compliance with the regulation.

Subparagraphs (a) (1) and (2) require the recipient to submit to UMTA copies of the comments on the recipient's program and the recipient's responses to these comments. The recipient could submit photocopies of the comment letters it received and the responses it sent back to commenters to whom the recipient replied by letter. The recipient could submit summaries of comments and responses. The recipient could send a copy of the transcript of the public hearing. The recipient could send summaries of the comments and its responses to them, including summaries of presentations at the public hearing. It is not intended that informal replies made by the recipient's officers and employees at a hearing would be sufficient to constitute replies to comments for purposes of the "accommodate or explain" requirement, however. Whatever way the information is provided, it should allow UMTA to learn the substance of the comments and the identity of the persons or groups making the comments.

The planning process should involve a thorough analysis of the alternatives for providing transportation services to handicapped persons. The supporting documentation for the program submission should clearly reflect this analysis of alternatives (see subparagraph (a)(3)). Given what appear to be potential significant cost and cost-effectiveness advantages for private-sector related alternatives like user-side subsidies and coordination of services, and consistent with UMTA policy statements on private sector participation and user-side subsidies, UMTA will pay particular attention to recipients' consideration of these alternatives.

In looking at the costs of alternatives, including the alternative recommended in the recipient's program, the recipient should document expected eligible costs, including recurring as well as one-time capital and operating costs. This consideration of costs should cover the phase-in period to the full performance level, as well as the projected cost of providing service at the full performance level.

Subparagraph (a)(3) also requires recipients to calculate their limit on required expenditures. These limits should be estimated for at least the phase-in period and the first year of service at the full performance level. Recipients requesting approval of programs providing service that does not fully meet the service criteria should also include information about the cost, and cost-effectiveness, of trade-offs that recipients propose to make in order to permit their costs to remain below the cost limits, as well as of alternative trade-offs that the recipients considered.

The Department emphasizes that the choice of the mode of service for handicapped persons is the recipient's. However, UMTA may question the planning process or its conclusions and, as part of its response to recipients' submissions, call for additional analytic work or a reconsideration of the recipient's recommendations.

Paragraph (b) sets a 120-day deadline for UMTA to complete review of recipients' programs. If UMTA fails to meet this deadline, it has the obligation to inform the recipient of an extension of the review period before the 120 days have passed. The written notice must state the reason for the extension. It will also include a reasonable estimate of the date on which UMTA will conclude review.

UMTA will carefully scrutinize the recipient's program to ensure that it provides for meeting the full performance level as soon as reasonably feasible, but within the 6-year maximum phase-in period in any event. (UMTA will have the final decision on the appropriate length of the phase-in period.) UMTA will also check the program to ensure that its milestones lead realistically toward the full performance level. UMTA will not approve a program that does not meet these tests.

When UMTA does complete review, paragraph (c) provides that it will send one of three responses to the recipient. First, UMTA can tell the recipient that its program is approved as submitted. In this case, the program may go into effect at once, and the program's schedule for the implementation of service begins to run on the date of UMTA's approval notice. Second, UMTA can specify certain changes that need to be made in the program before it can be approved. Such a response can require both substantive changes (e.g., a change in the time, place, or manner of providing service) and procedural changes (e.g., additional public participation or recipient response to comments if UMTA concludes that procedures had not been fully adequate). UMTA can also require the recipient to revise its analysis or conduct additional analytic work.

The phase-in period would begin at the time of the original UMTA decision not to approve the program as submitted. It would not be appropriate to permit the time necessary for the recipient to fix program deficiencies to delay the implementation of full service to disabled persons. Finally, if it appears to UMTA that the program is so seriously deficient that the recipient needs to completely rework it, or it has been submitted in bad faith, UMTA may disapprove the program. UMTA has the discretion to begin enforcement action under Subpart F at this point.

If the program is not approved as submitted, UMTA's notice will give the recipient a certain amount of time—between 30 and 90 days—to make necessary changes and resubmit it. Like failure to submit a program on time in the first place, failure to resubmit a modified program in the time required by UMTA subjects the recipient to being found in noncompliance with this rule. The time and notice provisions of paragraphs (c) and (d) apply to resubmissions just as they apply to initial submissions.

However, UMTA is not obligated to "bounce" deficient programs back to recipients indefinitely. UMTA may disapprove an original or a resubmitted program, conclude that the recipient is in noncompliance, and begin enforcement proceedings.

Section 27.87 Provision of service.

Recipients have the obligation to actually provide the service to disabled persons that their programs promise. Paragraph (a) of this section makes the general statement that each recipient shall, at all times, provide the service described in its program. The "at all times" language is intended to ensure the continuity of service. For example, a recipient could not, consistent with the requirements of this section, provide service meeting all the requirements of this regulation and its program for the first 2½ weeks of a given month and then provide no service for the remainder of the month. Nor could the recipient provide the service for only 6 months out of the year. The service, moreover, must be provided to all eligible persons. It would not be consistent with this requirement for the recipient to provide service to some eligible persons but not to others.

Paragraph (b) sets out in greater detail some of the specific obligations that compliance with the general service provision requirement of paragraph (a) entails. The first of these is ensuring that vehicles and equipment are capable of being used by the users to which the service is directed, and are maintained in proper operating condition.

The recipient must ensure that all vehicles the recipient operates or relies upon to meet its obligations under this subpart are consistently maintained so that the vehicles can get to where they need to go in order to provide service. The recipient must also ensure that lifts and other specialized equipment needed to make vehicles usuable by handicapped persons work consistently so that handicapped persons can actually use the vehicles.

This paragraph also requires that the vehicles and equipment used by the recipient be capable of accommodating all users for which the service is designed. For example, a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on its buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section (Of course, if a special services component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.)

UMTA will not mandate a particular spare ratio; the recipient's obligation, however, is to ensure that it has sufficient numbers of vehicles in operating condition in reserve, so that if "front line" vehicles must be taken off the road for maintenance or repair, there will be no interruption or decrease in service to handicapped individuals.

The attitudes and skills of providers' personnel are one of the most significant factors in determining whether service for handicapped persons will be good or inadequate. The recipient must ensure that all personnel who may deal with handicapped individuals (whether as drivers or as administrative personnel) know, as necessary, how to operate lifts and other equipment properly, know how to recognize and deal with the different kinds of disabling conditions that the users may have, and deal with handicapped individuals respectfully and courteously. It is the responsibility of the recipient to make sure that this training does take place, and that handicapped users of the service are not treated poorly as the result of inadequate training.

In order to use a transportation system, any individual needs adequate information concerning that service. This is particularly true of handicapped individuals. This provision requires recipients operating scheduled accessible bus systems to provide information on schedules and in other sources of information concerning which bus runs are accessible. It is clear that, unless a potential user knows which bus on which route will be accessible, the user will be unable to take advantage of the service. A recipient need do nothing elaborate to comply with this requirement. For example, an asterisk or other symbol next to accessible bus runs on printed schedules would be adequate in most cases. If the recipient has a telephone information service for the public concerning routes and schedules, that service should provide the same information, and do so in a way useful to hearing-impaired persons (e.g., via a telecommunications device for deaf persons).

In addition to making sure that information and communications links are established, the recipient must also make sure that the communications links have sufficient capacity to accommodate the demand for their use. A paratransit system requiring phone-in reservations that has only one telephone, which is chronically busy, probably cannot provide the kind of service that the recipient's program calls for.

Paragraph (c) of this section is intended to make explicit that the regulation does not permit recipients to engage in disparate treatment, to the disadvantage of handicapped persons, with respect to transportation on the recipient's regular mass transit system. Even though the recipient may also provide special services for handicapped individuals, if a handicapped person is capable of using the recipient's regular service for the general public, then the transit operator cannot deny the service to the handicapped person on the ground of handicap. This means, for example, that a recipient must permit a person using means of assistance such as dog guides or crutches to use its vehicles and services for the general public, if the person can do so. This requirement and the nondiscrimination requirement of Subpart A would also bar actions by recipients that impose unreasonably different or separate treatment for handicapped persons (e.g., an unjustified requirement that a handicapped person, who is able to travel independently, travel with an attendant).

Because this regulation permits a phase-in period between the approval by UMTA of the recipient's program and the achievement by the recipient of the full performance level, paragraph (d) is intended to ensure that there will not be a gap in the provision of any service to handicapped persons by the recipient. In reviewing and approving programs, UMTA will, of course, seek to ensure that the recipient's service to meet the requirements of this subpart is phased in at a reasonable pace so as to provide for a steady increase in the amount and quality of service provided up to the full performance level. If the recipient is phasing out its former type of service, and phasing in a new type of service, the exact point at which the new service has been phased in, such that the old service can be phased out, will be left to the recipient's judgment, subject to UMTA oversight.

Section 27.89 Monitoring.

Under section 9 of the UMT Act (49 U.S.C. 1607a (g)(2)), UMTA is required, every three years, to review and evaluate the entire spectrum of each recipient's federally-assisted mass transit activities. These triennial reviews will be held on a schedule to be determined by the UMTA Administrator; in all likelihood, they will be held in a staggered basis, so that approximately a third of all recipients are reviewed each year.

Paragraph (a) of this section declares that the review and evaluation of recipients' activities under this regulation will be conducted at the same time as the section 9 review and evaluation. The review and evaluation of transportation services for handicapped persons will be performed by, or at the direction of, UMTA personnel. UMTA may issue further guidance to recipients concerning the recipient's responsibilities in this process. This guidance may include, either on a general or a recipient-specific basis, requests for information necessary to assist the UMTA personnel in the review.

Some recipients will receive their first review and evaluation of performance under this regulation in the second year that their program has been in effect. Others will not receive their review and evaluation until sometime during the third or fourth year after their program has been reviewed and approved. Each recipient will, however, receive subsequent reviews and evaluations every three years after their first review occurs.

Paragraph (b) of this section concerns what is likely to be a very small group of recipients: recipients who are required to submit a program under § 27.81 of this regulation but who, for some reason, do not receive section 9 funds or otherwise are not required to go through a section 9 review and evaluation every three years. Some small recipients, for example, could fall into this category. For recipients in this category, UMTA will conduct a triennial review and evaluation of performance under this regulation just as if such a review were in conjunction with the section 9 review process.

Paragraph (c) of this section concerns what might be called a "slippage report." In its program, each recipient is required to establish a schedule for phasing in its service for handicapped persons until it reaches the full performance level. If recipients fall behind this schedule, paragraph (c) requires them to submit a report to UMTA no later than the program approval anniversary date of any year in which such slippage occurs. The report must detail the kind and degree of slippage that occurred, explain the reason for the problem, and set forth the corrective action that the recipient has taken or is taking to correct the problem and bring its entire program back on schedule. This same reporting requirement applies in any year, after achievement of the full performance level, in which the recipient's service, for any reason, falls below the full performance level.

This reporting requirement is a condition of compliance with the regulation. Failure to make the required report to UMTA is, in itself, a ground for a recipient being found in noncompliance with its obligations under the rule and being subject to sanctions under Subpart F.

Section 27.91 Requirements for small recipients.

This section sets forth a separate set of requirements that apply to section 18 recipients and other recipients (regardless of what UMTA funds they receive) which provide service to the general public only in non-urbanized areas (i.e., areas of 50,000 population or less). As with the requirements for recipients in urbanized areas, these requirements apply only to recipients that provide service to the general public. This section does not apply to section 16(b)(2) recipients or other recipients providing service only to elderly and/or handicapped persons. Recipients covered by this section are not required to follow the requirements of the rest of this subpart, except for § 27.87, "Provision of Service."

For purposes of this section, the term "recipient" should be understood to refer to the local government agencies and other organizations actually providing transportation service in nonurbanized areas. We are aware that, in the section 18 program, a state agency is the initial recipient of UMTA funds, which the state then passes through to subrecipient service providers. However, the requirements of this section are not intended to apply to the state agencies involved.

Paragraph (b) requires all recipients covered by this section to certify, within a year of the effective date of this subpart, that they are in compliance with this rule. If a certification of the kind required by this subsection has already been provided by the recipient under the July 1981 interim final rule, and is still in effect, a new certification need not be provided. This should be the case for present section 18 recipients. Otherwise, the certification must be provided within 12 months of the effective date of the subpart.

The effect of this requirement is that recipients have service in place within the 12-month period following the effective date of this subpart. Given the relatively small scale of operations by recipients in this category, the 12-month period should be sufficient. This constitutes the "reasonable time" mentioned in the regulation. A similar amount of time would be permitted future new recipients.

The substance of the transportation service that recipients are required to provide in order to be able to make this certification is similar to that required for section 18 recipients under the July 1981 interim final rule. Special efforts must be made to provide transportation that those handicapped persons unable to use the recipient's service for the general public can use. It should be noted that these efforts do not have to be made by the recipient itself; the certification goes to the presence of the "special efforts" service in the service area, not to whom is providing it.

The service provided by recipients must be "reasonable in comparison to the service provided to the general public." This statement embodies a minimum service criterion for the recipient's service to handicapped persons. It requires that the characteristics of service made available to handicapped persons be reasonably comparable to the characteristics of service for the general public. UMTA's monitoring of recipients' service will focus, on a case-by-case basis, on recipients' compliance with this criterion.

The second minimum service criterion requires that the service must meet a "significant fraction of the actual transportation needs" of handicapped persons. While the criterion stops short of requiring that all transportation needs of handicapped persons or all demand for service must be met, it does require that substantially more than a token effort be made to meet that demand. Rural and small urban systems are seldom designed to meet all transportation needs of the people of the service area. In monitoring recipients' service, however, UMTA will review whether the service proportionately meets the needs of handicapped as well as non-handicapped members of the community.

Paragraph (c) follows the statutory language of section 317(c) by directing recipients to ensure that handicapped persons and groups representing them have adequate notice of and the opportunity to comment on the present and proposed activities of recipients for achieving compliance with the requirements of this regulation. This notice and comment process may take place at any time within the first nine months after the effective date of this subpart, but must precede the submission of any of the required certifications or reports.

This requirement applies to all recipients covered by this section, including present section 18 recipients who already have made the appropriate certificate of compliance. In the case of a present section 18 recipient or other provider of existing service, the purpose of the notice and comment period would be to identify problems in and suggest improvements to the existing service.

The same public participation requirement also applies whenever the recipient proposes significant changes in its service. The participation must occur before the change is finally decided upon and implemented.

Paragraph (d) requires each section 18 recipient to provide a one-time status report on its service. This requirement applies to all recipients covered by this section, including present section 18 recipients who have already made the certification of compliance. The report is intended to be a short summary of information concerning the four listed items.

In order to permit UMTA to continue monitoring the recipient's activities, each recipient is required, under paragraph (e), to provide a similar update report at three-year intervals. UMTA will establish a schedule for the transmission of these reports: some recipients will provide their first such report after the second year this subpart has been in effect; others will not have to do so until after the third or fourth year. Reports under this section normally go to the designated state transportation agency (paragraph (f)). UMTA will review their reports in conjunction with its normal oversight of the section 18 program.

Section 27.93 Multi-recipient areas.

Paragraph (a) provides that this section applies to recipients in any multi-recipient area. A multi-recipient area is an urbanized area that includes two or more recipients required to prepare a program under § 27.81. The purpose of the section is to provide recipients in such an area the opportunity to combine their resources to provide service for handicapped persons on a regional basis.

This section is not mandatory. Recipients are not required to join a compact and provide service in conjunction with other recipients in their area, and recipients are free to comply with regulatory requirements on an individual basis.

In most cases, all recipients in the urbanized area required to prepare a program would have to be members of the compact in order for the compact to be workable. There could be cases in which a compact with less-than-unanimous membership could be viable, however; recipients should work with their UMTA regional office to ensure that any compact which is formed would be capable of providing service meeting the requirements of this rule. Recipients outside the urbanized area, or recipients who do not have to prepare a program, may also be members of a compact.

The compact must establish a cooperative mechanism among all its signatories to ensure the provision of combined and/or coordinated service meeting all regulatory requirements. Such a mechanism could take many forms, and this section does not attempt to prescribe the institutional form the arrangement would take.

In any multi-recipient or multi-jurisdictional agreement, a key question concerns where the money is coming from. The compact must answer this question. It must provide for how the costs of service for handicapped persons in the area would be apportioned among the members of the compact, ensure the provision of adequate funding, and include reasonable decision and dispute-resolution mechanisms concerning funding and service matters. The compact must be a formal, binding, written document, signed by each participating recipient. An informal understanding among recipients in an area is not sufficient for purposes of this section.

The recipients in an urbanized area have six months following the effective date of this subpart to form a compact and submit their agreement to UMTA. If the recipients fail to reach agreement and do not submit a compact within the six-month period, then each recipient must comply with regulatory requirements (including the 12-month deadline for program submittal) on its own. This means that recipients should not, while negotiating about forming a compact, neglect the early stages of planning service of their own.

If a compact meeting the standards of this section is submitted to UMTA in a timely fashion, then the members of the compact are treated by UMTA as if they were a single recipient for all purposes under this subpart, including planning, public participation, service provision, calculation of the limit on required expenditures, monitoring, and compliance and enforcement. It is important for recipients to understand that one of the consequences of joining a compact is that the members of the compact may be treated by UMTA as collectively responsible for the failure of the compact to provide the service required by the regulation and called for by the compact's approved program.

After UMTA acknowledges the compact within 30 days of its receipt, the members of the compact would submit to UMTA a single combined program for approval under § 27.85. The program submitted on behalf of the compact's members would have to reach UMTA 12 months after the date the signed compact was acknowledged by UMTA, rather than 12 months after the effective date of this regulation. This provision is intended to permit adequate time for planning on an areawide basis.

If, subsequent to the six-month period, recipients that did not originally form a compact decided to do so, UMTA has the discretion to acknowledge it. However, in such a case, the compact members would have to submit, for UMTA's review and approval, a new, joint program for providing service to handicapped persons. This program would need to provide adequate information on how the transition from individual compliance to joint compliance with the rule would work. The individual programs that had been previously approved, and the service provided according to them, would remain in effect until the new combined program was approved.

By the same token, if an existing compact dissolves, the members would then have to submit individual programs to UMTA for approval. The same would hold true for a member that pulled out of a compact. If a recipient were to drop out of a compact, it would be required to continue to provide its services per the compact agreement until its own, new, independent program were approved and in operation.

Section 27.95 Full performance level.

(a) *Timing.* Under section 27.85, recipients have a year from the effective date of the new Subpart E to submit their program to UMTA. UMTA has 120 days to review it. Assuming UMTA acts on the program within that time (approval, disapproval, or remand to the recipient to fix deficiencies), the phase-in period would begin to run no later than 16 months from the effective date of the rule.

During this period, recipients are obligated to phase in their service. This is not intended to be a period of delay and inaction; the recipient is obligated to implement service according to the milestones set forth in its program on time (see discussion of § 27.81).

The phase-in period may run for a maximum of six years. Many recipients (e.g., those who are starting a new system or switching to a different mode of providing service) might need all or nearly all of the six-year period. On the other hand, some recipients have systems that may come close to meeting the full performance level at the present time. It would be contrary to the intent of the rule, for example, to permit a recipient that had 90 percent of the buses it needed to meet the service criteria for an accessible bus system to take six years to acquire the other ten percent.

The rule provides that the recipient's plan and milestones must provide for attaining the full performance level as soon as reasonably feasible. UMTA, in reviewing plans, will approve phase-in periods for each transit authority on a case-by-case basis, reflecting this policy as well as the realistic needs of each recipient for time to phase-in its service, up to the six-year maximum.

This paragraph notes that a recipient can comply by meeting the requirements of either paragraph (b), or (c), or (d). This language is intended to emphasize that the recipient may decide to operate either a special service system, an accessible bus system (of either type), or a mixed system. A recipient, for example, is not required to have both an accessible bus system and a special service system. The decision on which service option to implement is intended to be made by the local recipient.

The remainder of this section lists the service criteria applicable to special service, accessible bus, and mixed systems. The Department has established six service criteria that apply to all the modes of service to handicapped persons. These concern eligibility, hours and days of service, service area, fares, restrictions and priorities based on trip purpose, and response time. Paragraphs (b), (c), and (d) explain how these six basic criteria apply, specifically, to each mode of service. Though the criteria are essentially the same, the detail of their application to the various modes of service vary somewhat in order to make sense in view of the differing characteristics of the different types of transportation.

(b) *Service criteria for special service systems.* The following criteria apply no matter what type of special service the recipient provides (e.g., transit authority-operated paratransit, user-side subsidy).

(*1*) *Eligibility.* The eligibility criterion provides that the recipient must treat as eligible any individual who, at the time he or she would receive service is, by reason of a disability, physically unable to use the recipient's bus service for the general public. A recipient may, of course, voluntarily provide service to other persons as well, such as non-disabled elderly persons or mentally handicapped individuals. However, the cost of providing this service to additional users is not an eligible expense under § 27.99

This provision is not intended to permit recipients to turn away from their special service systems users who would be unable to use an accessible bus system for reasons unrelated to the system's accessibility. For example, physical or terrain barriers, bad weather, or distance may prevent some handicapped persons from getting to a bus stop. These persons are still required to be treated as eligible for special service, because they could board and use fully accessible buses if they were able to get to a bus stop.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, would be able to use the regular system with appropriate training, and the Department encourages the development and implementation of such training programs to increase the transportation opportunities for mentally handicapped persons. It is also necessary that training be provided for the drivers so that they will better understand, be patient with, and appropriately respond to questions from mentally retarded persons.

The rule does not specify the means a recipient may use to determine physical inability to use the regular bus system, although reasonable "functional criteria" may be used. The means the recipient would use to determine physical inability to use the regular bus system would be incorporated in the program submitted for UMTA approval.

The Department does not intend to require recipients to use age, by itself, as a basis for determining that an individual is physically unable to use the regular bus system. No one need be presumed to be physically unable to use the regular bus system just because he or she has reached a certain birthday. Many elerly persons may suffer mobility impairments or other handicaps that physically prevent them from using the regular bus system, but it is these disabilities, not age itself, that determines eligibility.

The key is whether or not a particular elderly person can physically use the service for the general public. Some 80 year old individuals may be able to physically use the service for the general public, and some 65 year old individuals may be unable to do so. If, because of age, an individual is physically unable to use the regular service—even if that individual does not have a specific medical condition—that individual is eligible for the special service.

A similar analysis applies to young children. If, because the recipient has a reasonable, nondiscriminatory policy against permitting very young children to ride buses unaccompanied, or because such children cannot read destination signs, such individuals cannot use the bus system, these facts do not make them eligible to use the special service. This is because their youth, rather than a handicap, caused their inability to use the regular bus system (which is not, in any event, a physical inability).

It would not be consistent with this rule, however, for a recipient to deny a non-disabled child the opportunity to accompany a disabled parent or other adult on the special service system. This could be very important, for example, in allowing the parent to take the child to a medical appointment. The converse is also true. A non-disabled parent or other adult would have to be given the opportunity to travel with a disabled child.

The rule does not prescribe any particular procedures that recipients must use to determine eligibility. Existing systems use such means as letters from a doctor, certifications by social service organizations, and eligibility determinations (e.g., concerning meeting functional criteria) by the transit provider itself. Whatever procedure is used, the recipient needs to ensure that the procedure is prompt, avoids unnecessary procedural obstacles, does not impose more than nominal costs on potential users, and is consistent with the dignity of handicapped persons applying for eligibility. The eligibility procedure should be spelled out in the recipient's program.

Section 27.97 provides that recipients must meet this eligibility criterion in all cases, regardless of whether the recipient can meet all service criteria without exceeding the limit on required expenditures. In other words, the eligibility requirement of this rule is not subject to "tradeoff" in order to reduce recipient expenditures below the cost limit.

The Department intends that all users eligible under the Department's standard be permitted to use a recipient's special service, regardless of the user's place of residence. A visiting wheelchair user from City A is just as eligible, under the terms of this section and § 27.87, as a wheelchair user from City B to use the latter city's special service system. Recipients may need to waive or abbreviate the certification procedures they use for their regular local riders. The same point applies to persons with temporary, as opposed to permanent, disabilities.

(2) *Response time.* By response time, we mean the total period from the time the disabled person calls the special service provider to request service to the time the service is actually provided to the handicapped person (i.e., pickup). Recipients are obligated to provide, as well as schedule, service, within the required period. (see also § 27.87(b)(5), concerning timely provision of service).

We do not intend, however, to view recipients as being in noncompliance solely because of an occasional late pickup. Repeated, chronic failure to provide service within 24 hours of a request, however, is inconsistent with this criterion and with the recipient's obligations under this criterion.

The Department intends that this criterion be administered with reasonable administrative flexibility, for the benefit of both users and providers. For example, it may not be reasonable for a recipient to insist that a user call the recipient at 7:30 a.m. on Monday in order to get service at 7:30 a.m. Tuesday, even though this insistence would be literally consistent with the 24-hour response time criterion. A call at any point on Monday morning should usually be sufficient to permit the recipient to do the advance planning necessary for its morning trips on Tuesday.

Likewise, a recipient with no weekend bus service might not provide special service on weekends. Literally interpreted, the 24-hour criterion would force the recipient to open its call-in reservation office on Sunday to take reservations for Monday trips. The Department intends, in such a situation, that the recipient be able to keep its office closed on the weekend, taking reservations for Monday on the previous Friday.

The Department, then, interprets the 24-hour criterion to mean "a reasonable time on the previous business day" in many cases. In addition, this criterion is not intended to prohibit advance sign-up requirements for special-purpose trips (e.g., for a group field trip). Nor is it intended to prohibit a recipient from allowing a user to make a reservation for more than a day in advance (e.g., from calling on Monday to reserve a trip for Thursday).

(3) *Restrictions or priorities based on trip purpose.* This criterion is intended to prohibit recipients from determining that they will not provide service for certain sorts of trips, which they have determined to be of relatively low importance, or from providing trips for such purposes only after requests for the trips they deem to be of higher importance have been fulfilled. This criterion, however, is not intended to preclude recipients from establishing subscription services. Trips on the subscription service may be limited to certain purposes (e.g., recurring work or medical trips). However, a recipient which operates a subscription service may not deny or delay transportation to other individuals, for other purposes, on the ground that all capacity is exhausted by subscription service and still meet this criterion.

If a recipient cannot provide service that fully meets the criteria without exceeding its limit on required expenditures, it may make tradeoffs concerning trip purpose restrictions or priorities. For example, if after serving subscription work trips and medical trips, the recipient does not have enough other capacity to serve persons wishing trips for other purposes during peak hours, the recipient could "time-shift" the trips for other purposes to non-peak hours. The "time-shifted" trips would still be served during the requested day, at a non-peak time convenient for the user.

(4) *Fares.* The fare charged for a trip to a user of the special service is required to be comparable to a trip of similar length, at a similar time of day, on the recipient's bus system. We recognize that, in most cases, a trip taken on special service will not be identical, in route or in length, to similar trip taken on the regular bus system. We recognize also that the cost and convenience characteristics of special service systems differ from those of bus systems.

The key to determining an appropriate fare for the special service trip would be to calculate the cost of a similar trip on the regular bus system that the individual would take to get from his origin to his destination, if he or she were not handicapped, including the cost of transfers, if any (or zone change charges, express bus fares, etc.). Should there not be any reasonably equivalent trip that a user of the bus system could take, then the bus fare used for purposes of comparison would be derived by comparing the special service trip taken by the handicapped person to a bus trip of similar length elsewhere in the recipient's bus system.

Determining "comparability" between the bus fare for a similar trip and the special service fare is not an exact science. Decisions must be made on a case-by-case basis, taking into account such factors as the relative costs of providing the service, the time and convenience factors affecting users, and the Department's policy against pricing service out of the reach of users. It is likely, for example, that a $1.50 fare for special service would not be out of line, compared to a basic 80 cent fare for a similar bus trip, in most cases. At the other end of the scale, charging a special services user $20 for the same trip would be far removed from "comparability," because it would be grossly disproportionate to the bus fare and would deter disabled persons from using the service.

In doubtful cases falling in the middle of the scale, recipients should consult with UMTA. Fare levels for special service are, of course, one of the items that recipients should cover in their program submissions. While determinations are case-by-case, it is likely that UMTA would question fare levels that rose above two or three times the bus fare for a similar trip at a similar time of day.

This criterion deals with the fare charged the individual disabled user of the special service. If the bus fare between Point A and Point B is 80 cents, then the recipient can charge a special service user no more than a comparable fare for a similar bus trip. However, this requirement is not intended to preclude the common arrangements between recipients and social service agencies in which the social service agency subsidizes a considerable portion of the cost of a trip. The amount of such a subsidy is a matter between the recipient and the agency.

(5) *Hours and days of service.* If a recipient operates its bus service from 6:00 a.m. to midnight, seven days a week, then special service (e.g., paratransit or user-side subsidy) must be available throughout at least the hours 6:00 a.m. to midnight, seven days a week. By saying "throughout" this period, the Department intends that service be available at any time during these hours. Providing service only during peak hours, or only from 6-7 a.m. and 10-11 p.m. would not be consistent with this requirement.

This criterion is subject to "tradeoff" in a situation in which a recipient cannot meet all applicable service criteria without exceeding its limit on required expenditures. For example, a tradeoff (affecting the service area as well as the hours of service standard) might involve providing service to an area smaller than the urbanized area late at night and on Sundays, even though the regular bus system was operating at those times.

(6) *Service area.* A recipient must provide special service "throughout" the "circumferential" service area in which it provides regular bus service. This means that the recipient must provide this service not just

along transportation corridors served by buses, but to all points of origin and destination within this area. (This is not intended to literally require door-to-door service, however. As long as the service is from the building or other location of origin to the building or other destination location, the criterion would be satisfied. Actually assisting a handicapped person from the door to the curb, for example, is not required.) A "many-to-few" system, with limited origins or destinations within the urbanized area, would not be consistent with the requirement to provide service "throughout" the area.

The recipient could determine the extent of the "cricumferential" service area in a number of ways. As the term implies, the recipient could simply draw on a map a circle encompassing the area in which all its regular bus routes operate. Alternatively, a recipient could take the outer termination points of its routes and "connect the dots," resulting in boundaries for the service area that more precisely follow the contours of the actual bus service area. Where the normal service is within the urbanized area, the Department would also have no objection, in many cases, to a recipient using the urbanized area as a service area for this purpose. Particularly for a recipient that already provided bus service to most parts of the urbanized area, this approach could be administratively simpler.

In determining the extent of its service area, the recipient need not encompass extended commuter or express bus routes. For example, many recipients may have a city/suburban service area that is served regularly during peak and non-peak hours. In addition, the recipient may have peak-hour express commuter service to more distant exurban points. These commuter bus "spokes" do not extend the circumferential "hub" area that the recipient must serve with origin-to-destination special service.

For service (e.g., commuter bus) extending outside the basic service area, the recipient is required to provide service to handicapped persons only to and from the same points (e.g., bus stops) served by its buses for the general public. This service could be by special service following the bus route or accessible commuter bus, and would have to run only at the times when the commuter buses operated. Service to other origins and destinations outside the basic service area is not required.

The circumferential service area need not necessarily be the same at all times of the day or week. For example, some recipients might not offer any late-night or weekend bus service on many routes outside the central city. The service area for special service could shrink proportionately at these times.

The service area criterion is subject to "tradeoff" in the event that the recipient could not meet all applicable service criteria without exceeding its limit on required expenditures. As part of a tradeoff, a many-to-few system, a fixed route-deviation system, or another variation on special service that did not serve all origins or destinations could be employed.

(c) *Service criteria for accessible bus systems.* The final rule does not contain any specific requirement for the number of accessible buses a recipient must own and operate. Rather, subparagraph (1) of this paragraph says that the recipient must operate, on the street, enough buses to ensure that it meets the service criteria of subparagraphs (2) and/or (3).

To operate this number of buses on the street, recipients will need to consider the number of accessible buses they need in their reserve fleets. It is clear that in order to maintain the appropriate number of accessible buses on the street, a recipient will need to have some accessible buses in reserve in order to cover maintenance down time and other contingencies. A recipient would not comply with this subparagraph (or with § 27.87) if it owned sufficient accessible buses to meet the service criteria when all wer operating, but, for lack of reserve accessible buses, was unable to keep enough buses actually on the street to meet the criteria at all times.

Subparagraph (2) sets forth the other service criteria for scheduled accessible bus systems. A scheduled accessible bus system is simply one in which accessible buses are scheduled to be used for (and are used for) certain runs on certain routes. This use must be regular and consistent.

Subparagraph (2)(i) requires the scheduled accessible bus service to be available throughout the same days and hours as the recipient's bus service for the general public. For example, if a recipient's regular bus service runs from 6 a.m. to 12 midnight, then the scheduled accessible bus service must be available throughout this 18-hour period. Running accessible buses only during peak hours, or having only the first and last bus runs on a route accessible, would not be consistent with this criterion.

The scheduled accessible bus service running throughout this 18-hour period would have to be provided at reasonable intervals that make readily practicable the use of the service by handicapped persons. The regulation does not establish a specific requirement for what these intervals must be. The recipient's judgment about appropriate intervals, which should be informed by the rule's public participation and planning process and which is subject to UMTA review as part of the recipient's program submission, may vary according to such factors as demand for accessible service on a particular route and the time of day.

Every interval on evey route in the system need not be the same. But intervals so wide or irregular as to provide merely token or perfunctory service, or which are significantly inconsistent with demand for accessible service, would not comply with this criterion.

Subparagraph (2)(ii) requires accessible bus service to be provided on all routes throughout the recipient's service area on which a need for service has been established through the rule's planning and public participation process. By saying "throughout the service area," this provision is not limited to service within the basic circumferential service area. Any route on which the recipient provides regular bus service (including extended commuter routes and express bus service) is potentially required to have accessible service.

Whether the potential requirement for accessible service on a given route becomes actual depends on whether the planning and public participation process shows that a need exists for accessible service on that route. The Department intends that a need for accessible service on a route be regarded as having been established when it is shown that one or more handicapped persons are likely to make reasonably regular use of bus service along some part of the route.

For example, bus routes serving centers for independent living, important transportation terminals, major medical facilities, universities, major employment centers, and other origins and destinations that are likely to generate trips by handicapped persons would probably need to have accessible service. However, a need for accessible service could also arise on a suburban route because one or more handicapped persons wished to use that route for trips to work, shopping, or other purposes on a reasonably regular basis.

The Department believes that it would be desirable for recipients choosing a scheduled accessible bus system to make some provision for providing services to disabled persons whose origin or destination is not on an accessible route. The form of such service is up to the recipient, however.

As with service intervals, the routes served by accessible bus service may change over time, as new service needs arise and former service needs disappear. Changes in the route structure of accessible service are also appropriate subjects for consultation through the continuing public participation process.

Subparagraph (2)(iii) provides that the fare for a handicapped person using the accessible bus system cannot be higher than the bus fare paid by other passengers. Everyone who gets on the bus to go from Point A to Point B pays the same fare, except that the elderly and handicapped half-fare program of 49 CFR § 609.23 continues to apply in the accessible bus context.

Subparagraph (3) contains service criteria for on-call bus service. An on-call accessible bus system is one in which accessible buses are not regularly scheduled on any particular routes or runs. Instead, handicapped persons wanting to use accessible buses call the transit provider and arrange for an accessible bus to come by a particular bus stop on a given route at a certain time.

Some of the criteria for on-call accessible bus service are virtually identical to the special service criteria. The eligibility (subparagraph (3)(i)), response time (subparagraph (3)(ii)), and the restrictions and priorities based on trip purpose criterion (subparagraph (3)(iii) are in this category. The fares criterion (subparagraph (3)(iv)) is identical to the fares criterion for scheduled accessible bus service.

Subparagraph (3)(v) concerns days and hours of service. Like its counterpart in the scheduled accessible bus service context, it requires service to be provided throughout the same days and hours as the recipient's bus service for the general public. This means that a handicapped person can request that any bus run the recipient makes, during any time the run is made for the general public, be made with an accessible bus. The recipient is obligated to fulfill the request. There is no provision concerning the intervals at which service is to be provided. Service is provided in response to all requests made for it.

The service area criterion (subparagraph (3)(vii)) requires accessible service to be provided on all the recipient's routes, on request. This means that when the recipient receives a request from a handicapped person for accessible service, the recipient must fulfill this request regardless of the route on which the service is requested (including extended commuter routes and express bus runs).

There is, however, no reference to establishing the need for bus service on particular routes through the planning process. This is because, in an on-call accessible bus system, need for service is established by each individual request for it, rather than on a generic basis for scheduled service on a route.

This subparagraph also specifies that "all buses needed to complete the handicapped person's trip" have to be provided. For example, suppose a handicapped person has to take a bus on route A to a given stop, and then transfer to a route B bus, in order to reach his or her destination. The recipient must ensure that the B bus, as well as the A bus, is provided at the appropriate time.

A recipient may comply with the rule by setting up an accessible bus system incorporating elements of both scheduled and on-call accessible service. For example, the recipient could operate scheduled accessible bus service during peak hours while using on-call service during off-peak hours. A recipient could operate scheduled service on certain heavily-used corridors while using on-call service elsehwhere. The scheduled and on-call components of the service would each have to meet the service criteria for the respective types of service, and there could not be "gaps" in the overall service that left some routes, times, etc. unserved for handicapped persons.

For purposes of this rule, an accessible bus is one of that a handicapped person, including a wheelchair user, can enter and use. Currently, an accessible bus usually means a bus equipped with a lift. The Department does not intend to mandate the use of a particular piece of technology, however. If a device or bus design other than a lift-equipped standard transit bus can produce the same or better results for handicapped persons than present technology, then the Department will be willing to consider regarding it as meeting the accessible bus requirement.

(*d*) *Service criteria for mixed systems.* A mixed system is simply one in which some parts of the service area, or some days or times of day, are served by an accessible bus system, and others are served by a special service system. The key thing to remember about a mixed system is that each component must meet all criteria pertaining to that component. The overall system cannot have "gaps" that leave some areas, times, etc., unserved by service for handicapped persons.

In a mixed system, the special service and accessible bus components are not required to duplicate each other's efforts. Consequently, the special service system would not have to provide parallel service along accessible bus corridors. For example, the special service system would not have to honor a request from a handicapped person to be picked up at his home, situated reasonably close to a bus stop on an accessible corridor, and be transported to a destination served by a bus route using that stop.

The recipient might also reduce the scope of the special service it had to provide by linking the ends of or other strategic points on accessible routes with an accessible shuttle service, so that someone wanting to travel from a point along Route A to a destination at the end of Route B could complete his trip using only accessible buses and the shuttle. Except where it would duplicate accessible bus service, however, the recipient's special service would have to meet all service criteria applicable to any special service system (e.g., the special service system would have to pick up the same handicapped person from his or her home if he or she were going to a location not on the nearby accessible route or one accessibly connected with it).

The recipient is responsible for coordinating the components of its mixed system so as to minimize inconvenience to handicapped users. This coordination should include consideration of transfers between components. The coordination of mixed system components is one of the features UMTA will evaluate as it reviews the program submissions of recipients planning mixed systems.

(*e*) *Services of other providers and through other modes.* Paragraph (e) states the principle, for all service modes, that a recipient may count the services of other providers toward meeting the full performance level. This is true even though the expenditures of these other providers are not eligible expenses under § 27.99.

For example, suppose that a social service agency operates a subscription service that transports wheelchair users who need kidney dialysis to medical facilities where the treatment takes place. As part of a coordinated transportation system for handicapped persons in the urbanized area, the recipient is able to refer persons in this category to the social service agency, which provides the dialysis trips instead of the recipient itself. The recipient can count this service as part of the service meeting its full performance level.

This paragraph also provides that service provided through other modes of transportation may be counted toward meeting the service criteria. For instance, suppose a transit authority operates an accessible rail system. The recipient chooses to meet the full performance level through making its bus system accessible. Like many bus/rail operators, however, the recipient uses its buses to feed passengers into and out of the rail system. The recipient could feed disabled passengers into the accessible rail system in the same manner as it did other passengers, and would not have to run bus service that duplicated the rail lines. The recipient could treat both its bus service from Point A to a rail station and the accessible rail service from the station to Point B as contributing to meeting the service criteria.

The key is coordination by the recipient of these services into a coherent whole. The mere facts that a social service organization may be providing some transportation somewhere in the urbanized area, or that there may be an accessible rail system in the same area, unless these services are in a system coordinated by the recipient, are irrelevant to the recipient's ability to meet the full performance level.

Section 27.97 Limit on required expenditures.

Paragraph (a) sets forth the method recipients will use to calculate the limit on their required expenditures. First, the recipient calculates its average operating expenditures. It adds the operating costs reported to UMTA for the previous two fiscal years under section 15 to its projected operating costs for the current fiscal year and divides by three.

The estimate of operating costs for the current fiscal year must be a reasonable one, consistent with the budget estimates the transit authority makes for other purposes. (Obviously, the projection must concern the costs that will be reported under section 15.) An unrealistically low estimate, one at odds with the transit authority's recent operating cost experience, or one that differs significantly from estimates prepared for other local budgetary purposes, is not acceptable for this purpose.

Paragraph (b) concerns the effect of the cost limit. If a recipient can meet all the service criteria, for an amount less than the cost limit, then the cost limit is ignored during the fiscal year in question. However, the recipient is not required to spend more than the cost limit amount, even if, as a result, it cannot meet all the service criteria for the mode of service it has chosen.

For example, suppose a transit authority determined that meeting all the service criteria for its paratransit system would cost $800,000. If its cost limit is $650,000, it can voluntarily spend the entire $800,000 to meet all service criteria. However, this regulation does not require it to do so.

After consulting through the public participation mechanism established under § 27.83 of the final rule, the recipient could make decisions about the respects in which it paratransit service would fall short of one or more of the service criteria. For example, the recipient in the above example might determine that it could save $150,000 by not running the paratransit service on Sunday, raising fares above the level charged for similar bus trips, and not providing service to one segment of the service area which has relatively low demand for trips by handicapped persons. (In making tradeoffs, the recipient would have to act reasonably. For example, a recipient would not act reasonably in a tradeoff situation by raising fares to $30.00 a trip or restricting service to a 2 square block area.) These changes, though they result in service that does not fully meet the criteria, are allowed under the rule since the recipient need not spend more than $650,000 to comply with the rule.

Section 27.99 Eligible expenses.

To be eligible to count in determining whether the recipient has exceeded the § 27.97 limitation on required expenditures, an expenditure must meet two basis criteria. First, it must be an expenditure by the recipient of its own funds (including the UMTA assistance it receives). The total expenditures the recipient makes, not just the net expenditures after farebox revenues are considered, are counted. Second, it must be an expenditure specifically to comply with the requirements of 49 CFR Part 27, Subpart E.

This means that expenditures by other agencies (e.g., state and local government agencies, private social service organizations) on transportation services for handicapped persons cannot be counted for this purpose. As described in the discussion of § 27.95(e), the transportation services for disabled individuals that these other agencies provide can be "counted" by the recipient as part of the transportation services meeting the service criteria, however.

The same principle applies to the costs of operating an accessible rail system. No recipient need operate an accessible rail system to comply with this rule. However, a rail recipient may use an accessible rail system to help meet its service requirements. But the expenses of building and operating the accessible rail system are not attributable to meeting these regulatory requirements, and they are not, therefore, eligible expenses.

Subparagraph (b)(6) provides, however, that the incremental cost of construction of modification of facilities to enable handicapped persons to transfer between accessible modes of transportation is an eligible expense, if the improvement is approved as part of the recipient's program. For example, suppose that a recipient is voluntarily making a rail line or station accessible. The cost of making the rail line or station accessible is not an eligible expense, since this cost is not incurred to meet the requirements of this rule. However, the incremental cost of a new or relocated bus stop to serve the station or line, together with curb cuts, signs for the use of handicapped persons, or other accessibility-related improvements that help disabled persons transfer between the accessible rail and accessible bus systems would be eligible. It is important to emphasize that only the incremental costs of such improvements, attributable to features specifically related to service for disabled persons, are eligible. In reviewing recipients' programs, UMTA will scrutinize closely plans for "interface" improvements of this sort to ensure that only eligible costs are claimed for purposes of the limit on required expenditures.

Only expenditures specifically to comply with the requirements of this regulation are eligible. If a recipient chooses to provide service above and beyond what this regulation requires, only the expenditures actually needed to meet the Federal regulatory requirements are eligible.

For example, the rule does not require non-handicapped elderly persons to receive service from a special service system. If a recipient provides service to non-handicapped elderly persons, in addition to eligible handicapped persons, only the costs of the special service system attributable to carrying the latter may be counted.

Only those items necessary to meet the full performance level for the mode of service selected by the recipient will be eligible expenses. "Gold-plating" (the practice of attributing to service for handicapped persons the cost of items that generally improve the recipient's entire service to the public or loading down the service to handicapped persons with features or facilities not essential to meeting the service criteria) will not be permitted to drive up the reported eligible expenses service for handicapped persons to the detriment of providing service meeting the criteria.

This provision applies even if the things the recipient does above and beyond the regulation's requirements are required by another legal authority, such as the Architectural Barriers Act of 1968 or state or local law. For example, a recipient might, as the result of the Architectural Barriers Act, install an elevator in an existing subway station where it has otherwise modified the means of vertical access. Such an expenditure would not be the result of the requirements of this rule; the cost of installing the elevator would not be a financial burden imposed by the Department of Transportation in order to comply with section 504 and section 317(c). Consequently, the cost of the elevator could not be counted in determining whether the recipient had exceeded the § 27.97 limitation on required expenditures by recipients.

Section 27.99(b) mentions that the capital and operating costs for special service systems, and the incremental capital and operating costs of accessible bus systems, are eligible expenditures. The language of the section does not explicitly mention mixed systems. A mixed system is, by definition, a system made up of accessible bus and special service components. In determining whether the costs of a mixed system exceed the limitation on required recipient expenditures, the recipient would add the capital and operating costs for the special service component of its system and the incremental capital and operating costs of the accessible bus component of its system.

By "incremental" capital and operating costs of an accessible bus system, we mean those costs of meeting the service criteria for accessible bus systems that are in addition to the costs of operating an inaccessible bus system. For example, suppose a lift-equipped bus costs $120,000. Without a lift, and other equipment necessary to make the vehicle safe and accessible for handicapped persons (e.g., wheelchair tiedowns), the bus costs $108,000. The incremental cost of buying the accessible bus is $12,000. Only that amount, not the entire cost of the bus, is an eligible expense. The same principle applies to operating costs. If maintaining the lift on an accessible bus can be demonstrated to take 20 work hours in a certain period of time, the wages of the mechanics for those 20 hours can be counted, but not the wages of the mechanics for the total number of work hours required on the entire bus during that period.

Section 27.99(b)(3) specifies that administrative costs of coordinating services are eligible. In addition, reasonable administrative costs of a special service system or an accessible bus system may be considered as a part of the eligible operating costs of such systems. UMTA will consider, on a case-by-case basis, whether specific administrative costs are eligible, following the general rule that if a cost is generally an allowable cost for reimbursement with UMTA funds, that part of it directly attributable to providing service for handicapped persons can be counted for purposes of this section.

Section 27.99(b)(4) specifies that the incremental cost of training personnel to provide service to handicapped persons is an eligible item. Again, by "incremental cost" we mean the portion of the cost of training directly attributable to service for handicapped persons. For example, if four hours of a bus driver training course are devoted to operating the lift and otherwise accommodating handicapped persons on an accessible bus system, the cost of those four hours of training, but not the cost of the entire course, is eligible.

Section 27.99(d) requires recipients to annualize the cost of capital expenditures, such as the purchase of vehicles, over the expected useful life of the item. This provision would also apply to other major capital items (e.g., a new fixed facility specifically devoted to the garaging and maintenance of special service vehicles), but not to minor or routine purchases of supplies, parts, and other equipment. In doubtful cases, recipients should contact their UMTA regional office for guidance.

The Department is aware that there may be a number of methods, of varying degrees of accounting sophistication, for annualizing a capital expenditure. In the interest of simplicity, however, the Department intends that recipients simply divide the number of years in the expected useful life of the item into its cost, and then count the result toward the cost limit in each of the years involved.

For example, suppose that the incremental cost of a lift-equipped bus is $12,000, and that the expected useful life of a bus is 12 years. The annualized cost of the bus would be $1,000. Therefore, the recipient would count $1,000 in its calculation of eligible expenses for year 1, year 2, and so forth, through year 12.

Where there is not a generally accepted industry standard (e.g., 12 years for buses) for a given capital item, recipients should consult with their UMTA regional office for guidance on how many years should be regarded as the item's expected useful life.

Section 27.101 Technical exemptions.

This provision permits any recipient to request a technical exemption from any provision of this subpart. Such a request can be made at any time, as an independent request. It is also possible for a recipient to submit a technical exemption request as part of, or in connection with, the recipient's program submission. Section 27.101(b) clearly sets forth the standards for granting exemptions under this rule. These standards are consistent with the standards DOT has applied to requests for exemptions in the past. First, there must be special local circumstances. That is, the reasons specified for the requested exemption must be, if not literally unique, quite specific to the local area requesting the exemption. The Department will not grant an exemption based on circumstances common to a broad class of recipients. An exemption from a regulatory requirement based on circumstances common to many recipients would constitute, in effect, a rulemaking of general applicability, which may be made only through normal rulemaking procedures.

Second, the circumstances used to support the exemption request must involve matters not contemplated, or taken into account, as part of the rulemaking process for this rule. The Department is aware that it probably has not thought of all possible issues or situations that can arise. This exemption procedure is intended to apply to matters not dealt with in this rulemaking. If, on the other hand, the Department has received and considered comments on how a certain issue or situation has been handled, and then made a decision, the exemption process is not a mechanism for reconsidering a regulatory decision the Department has made.

Third, the applicant for an exemption must demonstrate that the circumstances cited make compliance with the rule unduly burdensome or unreasonable. The undue burdens or unreasonableness, consistent with the two standards discussed above, must be specific to the particular grantee, and not something affecting grantees, or a broad class of them, in common.

Fourth, the recipient must show that, if it is granted the exemption, it will take some alternate action that will substantially comply with the regulation. The grant of an exemption is not a license for noncompliance; it is agreement by the Department and the recipient that the recipient will take action adequate to provide transportation services to handicapped persons, even though it is, in some respects, excused from following the letter of the regulation. It should be emphasized, however, that the exemption provision is not intended to permit recipients to fashion "do-it-yourself" modifications of the requirements of the regulation.

The Department may grant a request for a technical exemption, in whole or in part, or deny it. The Department may also place any reasonable conditions on the grant of the exemption. The UMTA Administrator will sign grants or denials of exemption requests, and such requests should be addressed to the Administrator. In keeping with existing DOT practice, the Assistant Secretary for Policy and International Affairs must concur in grants or denials of exemption requests under this rule.

Section 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs

Section 27.103 provides a slightly different procedure for submitting documents under this subpart if a state has elected to administer UMTA's sections 5, 9, and 9A programs for UMTA. This procedure applies to urbanized areas of under 200,000 population. If a state has made this election, the designated state agency is the actual recipient of the UMTA funds and the state agency, in turn, passes them through to the urbanized area. This is similar to the section 18 program.

If the election is made, the local recipient must send the program required under § 27.85, the slippage report under § 27.89(c), the certification and report under § 27.91(f), and any compact under § 27.93(c) to the designated state agency and not to UMTA. (The state would have to inform UMTA when a slippage report was received). The designated state agency acts for UMTA to review and, as necessary, approve these documents. In doing so, any deadlines which the regulation imposes on UMTA apply to the designated state agency. For example, the designated state agency would, under § 27.85(b), have to complete its review of the local recipient's program within 120 days of its submission. Similarly, the time extensions under § 27.85(c) would also apply to the designated state agency.

Section 27.103(b) requires the designated state agency to certify to UMTA that the recipients in its state are in compliance with this subpart. This certification can cover more than one recipient, but it is due to UMTA no later than 30 days after the designated state agency approves the recipient's program.

It is important to note that the state's election to administer these programs is voluntary. Any recipient located in a state not so electing must send its material to UMTA. Also, the provisions in this section do not apply to small recipients covered by § 27.91.

Enforcement Procedures

Subpart F (§§ 27.121-27.129) of 49 CFR Part 27 concerns enforcement of the obligations of recipients under Subpart E, the mass transit program requirements, as well as all the other subparts of this regulation. Briefly, Subpart F provides that when, as a result of a complaint investigation or compliance review, the Department learns that a recipient appears to be in noncompliance, the Department first attempts to resolve the problem informally.

This informal resolution step is the most important part of the enforcement process, from the Department's view. At this stage, the Department works with the recipient to solve the planning, management, or operational problems that led to the enforcement action. The aim of the process is not to impose sanctions on the recipient, but to correct the situation so that the recipient provides service to handicapped persons as the regulation requires. Only if informal resolution fails does the Department resort to formal enforcement proceedings.

If there is reasonable cause for the Department to believe that the recipient is in noncompliance, and that the noncompliance cannot be resolved informally, the Department notifies the recipient that it proposes to suspend, terminate, or refuse to provide Federal financial assistance to the recipient. The recipient has the opportunity to present its case at a hearing before an administrative law judge. The judge makes a recommended decision to the Secretary, who may accept, reject, or modify the recommended decision. The Secretary's decision is administratively final (it may be reviewed by a Federal court under the Administrative Procedure Act) and the sanctions the Secretary orders remain in effect until the recipient comes into compliance with the regulation.

Any person who wishes to submit a complaint alleging that a recipient is in noncompliance with this regulation should send the complaint to the following address: Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Noncompliance should be understood simply as the failure by a recipient to do what the regulations require of it, or action by a recipient contrary to regulatory prohibitions. The following are examples (not intended to be an exhaustive or exclusive list) of conduct under Subpart E that could be regarded as noncompliance, for recipients to which the various requirements apply:

- Failure to have a program consistent with the requirements of § 27.81;
- Failure to follow any of the public participation requirements of § 27.83;
- Failure to submit the program documents to UMTA within the time frames of § 27.85;
- Failure to make timely changes in a program UMTA did not approve as submitted under § 27.85, such that UMTA can approve the program as consistent with this regulation;
- Failure to provide service, as required under § 27.87;
- Failure to submit a "slippage report" in the circumstances in which § 27.89(c) requires one;
- Failure by a small recipient to certify, provide for public participation, or provide reports as required under § 27.91.

Subpart F—Enforcement

§ 27.121 Compliance information.

(a) *Cooperation and assistance.* The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

§ 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

§ 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and § 27.125(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) *Time and place of hearing.* Hearings are held at the office of the Department in Washington, D.C., at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and

3344 (section 11 of the Administrative Procedure Act).

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible Departmental official have the right to be represented by counsel.

(e) *Procedures, evidence and record.* (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of Title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government's behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(f) *Consolidation or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with § 27.129.

§ 27.129 Decisions and notices.

(a) *Decisions by Administrative Law Judge.* After the hearing, the Administrative Law Judge certifies the entire record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final decision by the Secretary.* When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions if hearing is waived.* Whenever a hearing pursuant to § 27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) *Rulings required.* Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) *Content of orders.* The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved. The decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Subsequent proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he/she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b) through (c) and paragraphs (a) through (d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

Sec.

29.100 Purpose.
29.105 Definitions.
29.110 Coverage.
29.115 Policy.
29.120 Saving clause.

Subpart B—Effect of Action

29.200 Debarment or suspension.
29.205 Ineligible persons.
29.210 Voluntary exclusion.
29.215 Exception provision.
29.220 Continuation of covered transactions.
29.225 Failure to adhere to restrictions.

Subpart C—Debarment

29.300 General.
29.305 Causes for debarment.
29.310 Procedures.
29.311 Investigation and referral.
29.312 Notice of proposed debarment.
29.313 Opportunity to contest proposed debarment.
29.314 Debarring official's decision.
29.315 Settlement and voluntary exclusion.
29.320 Period of debarment.
29.325 Scope of debarment.

Subpart D—Suspension

29.400 General.
29.405 Causes for suspension.
29.410 Procedures.
29.411 Notice of suspension.
29.412 Opportunity to contest suspension.
29.413 Suspending official's decision.
29.415 Period of suspension.
29.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency, and Participants.

29.500 GSA responsibilities.
29.505 DOT responsibilities.

Sec.
29.510 Participants' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

29.600 Purpose.
29.605 Definitions.
29.610 Coverage.
29.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
29.620 Effect of violation.
29.625 Exception provision.
29.630 Certification requirements and procedures.
29.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

APPENDIX A TO PART 29—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
APPENDIX B TO PART 29—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS
APPENDIX C TO PART 29—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 49 CFR Part 322.

SOURCE: Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, unless otherwise noted.

EDITORIAL NOTES:

1: A nomenclature change affecting this part appears at 53 FR 19203, May 26, 1988.

2: For additional information, see related documents published at 52 FR 20360, May 29, 1987, 53 FR 19160, May 26, 1988, and 53 FR 34474, September 6, 1988.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990.

Subpart A—General

§ 29.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 29.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 29.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) *Debarring Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) *Suspending Official.* For DOT the designated official is the head of a Departmental operating administration, who may delegate any of his or her functions under this part and authorize successive delegations.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *DOT.* Department of Transportation.

(x) *Operating administration* includes the Office of the Secretary, the head of which, for the purposes of this rule, is the Assistant Secretary for Administration.

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 53 FR 19203, May 26, 1988]

§ 29.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions*. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections*. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 29.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 29.110(a). Sections 29.325, "Scope of debarment," and 29.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities*. Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR subpart 9.4.

§ 29.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

§ 29.120 Saving clause.

Any debarment or suspension initiated before October 1, 1988, shall be governed by part 29 of the Department's regulations as part 29 existed immediately before October 1, 1988, including § 29.125 thereof.

[Amdt. 29-1, 53 FR 19203, May 26, 1988]

Subpart B—Effect of Action

§ 29.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 29.215.

(b) *Loser tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 29.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 29.205 Ineligible persons.

Persons who are ineligible, as defined in § 29.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 29.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 29.315 are excluded in accordance with the terms of their settlements. DOT shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 29.215 Exception provision.

DOT may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 29.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 29.505(a).

(a) A debarring or suspending official may grant exceptions and make written determinations under this section.

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 53 FR 19204, May 26, 1988]

§ 29.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 29.215.

§ 29.225 Failure to adhere to restrictions.

Except as permitted under § 29.215 or § 29.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 29.300 General.

The debarring official may debar a person for any of the causes in § 29.305, using procedures established in §§ 29.310 through 29.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 29.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 29.300 through 29.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 29.215 or § 29.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and

overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 29.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 29.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 54 FR 4950, 4963, Jan. 31, 1989; 55 FR 21705, May 25, 1990]

§ 29.310 Procedures.

DOT shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 29.311 through 29.314.

§ 29.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 29.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 29.305 for proposing debarment;

(d) Of the provisions of § 29.311 through § 29.314, and any other DOT procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 29.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 29.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 29.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 29.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, DOT may, at any time, settle a debarment or suspension action.

(1) An operating administration may settle a debarment or suspension action under this section.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 53 FR 19204, May 26, 1988]

§ 29.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (*see* 29.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 29.311 through 29.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 54 FR 4950, 4963, Jan. 31, 1989; 55 FR 21705, May 25, 1990]

§ 29.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 29.311 through 29.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 29.400 General.

(a) The suspending official may suspend a person for any of the causes in § 29.405 using procedures established in §§ 29.410 through 29.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 29.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 29.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 29.400 through 29.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 29.305(a); or

(2) That a cause for debarment under § 29.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 29.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* DOT shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 29.411 through § 29.413.

§ 29.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 29.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 29.411 through § 29.413 and any other DOT procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 29.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 29.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 29.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 29.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 29.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 29.325), except that the procedures of §§ 29.410 through 29.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 29.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 29.505 DOT responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which DOT has granted exceptions under § 29.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 29.500(b) and of the exceptions granted under § 29.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 29.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(i) However, an operating administration may require that a person who enters into a primary covered transaction require the next lower tier participant to include, with conforming modifications, the certification in Appendix A.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to DOT if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

[Amdt. 29-1, 53 FR 19203, 19204, May 26, 1988, as amended at 53 FR 19204, May 26, 1988]

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21705, May 25, 1990, unless otherwise noted.

§ 29.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 29.605 Definitions.

(a) Except as amended in this section, the definitions of § 29.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged

with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 29.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 29.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 29.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)-(g) and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 29.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 29.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 29.320(a)(2) of this part).

§ 29.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 29.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 29.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

Appendix A to Part 29—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out

below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B TO PART 29—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction," principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 29—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and includ-

ing termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21705, May 25, 1990]

PART 30—DENIAL OF PUBLIC WORKS CONTRACTS TO SUPPLIERS OF GOODS AND SERVICES OF COUNTRIES THAT DENY PROCUREMENT MARKET ACCESS TO U.S. CONTRACTORS

Sec.

30.1 Purpose.
30.3 Applicability.
30.5 Effective dates.
30.7 Definitions.
30.9 Citizenship: Direct or indirect control.
30.11 Use of solicitation provisions and contract clauses.
30.13 Restrictions on Federal public works projects: Certification.
30.15 Restrictions on Federal public works projects.
30.17 Waivers.
30.19 Buy American Act.

AUTHORITY: 49 U.S.C. 322(a); Containing Resolution on the Fiscal Year 1988 Budget 109(a), Pub. L. 100-202; Airport and Airways Safety and Capacity Expansion Act of 1987, 115, Pub. L. 100-223.

SOURCE: 53 FR 19916, June 1, 1988, unless otherwise noted.

§ 30.1 Purpose.

The rules in this part implement section 109(a) of the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202 (signed December 22, 1987) [the Continuing Resolution], and section 115 of the Airport and Airways Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223 (signed December 30, 1987) [the Airport Safety Act]. These rules are intended to give uniform implementation to these statutes throughout DOT procurement and grant programs.

§ 30.3 Applicability.

(a) The restrictions imposed by section 109(a) of the Continuing Resolution extend to all DOT agencies as well as all recipients of DOT funds. The restrictions apply to all projects for which funds are obligated or contracts or subcontracts are awarded during fiscal year 1988, including projects and contracts under all DOT financial assistance programs. The prohibition applies to public buildings and public works projects everywhere in the United States or any territory or possession of the United States. U.S. overseas bases, installations, and embassies are not subject to this part.

(b) The restrictions imposed by section 115 of the Airport Safety Act extend to all projects for which funds are made available by that Act, whether or not the contracts are awarded during fiscal year 1988. The restrictions apply to all contracts entered into under grants authorized by the Airport Safety Act.

(c) This part applies to projects covered by section 109(a) of the Continuing Resolution, section 115 of the Airport Safety Act, or both. Whether one or the other statute or both apply, the effect on the project shall be the same, subject to paragraph (e) of this section.

(d) In addition to construction, alteration, and repair contracts, the restrictions of this part cover all architect, engineering, and other services related to the preparation and performance of construction, alteration, and repair of public projects and public works.

(e) The restrictions of this part also apply to all products used in the construction, alteration, or repair of public projects and public works; *Provided, however,* That

(1) The restrictions of this part do not apply to construction equipment or vehicles that do not become part of a delivered structure, product, or project and

(2) Notwithstanding paragraph (c) of this section, the restrictions of section 109(a) of the Continuing Resolution do not apply to vehicles to be used by the project, including, but not limited to, buses, trucks, automobiles, rail rolling stock, and aircraft.

§ 30.5 Effective dates.

The provisions of section 109(a) of the Continuing Resolution apply to contracts (or new subcontracts under existing contracts, whether or not subject to the restriction) entered into after December 22, 1987, its date of enactment, and before October 1, 1988. The provisions of section 115 of the Airport Safety Act apply to contracts funded by the Act and entered into after December 30, 1987, its date of enactment; the restrictions remain effective so long as money provided by the Airport Safety Act is used. Accordingly, any contracts or subcontracts subject to the restrictions of this part entered into with contractors or subcontractors owned or controlled by citizens of subject countries, as defined by §§ 30.7 and 30.9 of this part, since December 22, 1987 shall be canceled at no cost to the Government, subject to the waiver provisions of § 30.17 of this part. All public works or public buildings contracts entered into after December 22, 1987, shall include, or be modified to include, a provision prohibiting subcontracting with citizens of subject countries, as defined by §§ 30.7 and 30.9 of this part.

§ 30.7 Definitions.

(a) "Funds appropriated for FY 1988 by this resolution or any other law," as used in this part with reference to section 109(a) of the Continuing Resolution, means all appropriated and trust funds available to DOT, its modal administration, or their grantees for expenditure or obligation in fiscal year 1988, regardless of the fiscal year in which the funds were appropriated.

(b) "Funds made available by this Act," as used in this part with reference to section 115(a) of the Airport Safety Act, means all funds, including trust funds, made available to DOT, its modal administrations, or their grantees by that Act, whether or not the contracts to be funded are awarded during fiscal year 1988.

(c) "Contractor and subcontractor" means any person, other than a supplier of products, performing any architectural, engineering, or other service directly related to the preparation for or performance of the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States.

(d) "Contractor or subcontractor of a foreign country" means any contractor or subcontractor that is a citizen or national of a foreign country, or is controlled directly or indirectly by one or more citizens or nationals of a foreign country.

(e) "Service of a foreign country" means any service provided by a person that is a citizen or national of a foreign country, or is controlled by one or more citizens or nationals of a foreign country.

(f) "Product of a foreign country" means construction materials, i.e., articles, materials, and supplies brought to the construction site for incorporation into the public works project. A product is considered to have been produced in a foreign country if more than fifty percent of the total cost of the product is allocable to production or manufacture in the foreign country.

(g) "Foreign country" means a country included in the list of countries that discriminate against U.S. firms published by the U.S.T.R.

§ 30.9 Citizenship: Direct or indirect control.

A contractor, subcontractor, or person providing a service shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country, within the meaning of this part.

(a) If 50 percent or more of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(b) If the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligation in favor of one or more citizens or nationals of the foreign country;

(c) If 50 percent or more of the voting power in the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(d) In the case of a partnership, if any general partner is a citizen or national of the foreign country;

(e) In the case of a corporation, if the number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(f) In the case of a contractor or subcontractor that is a joint venture, if any participant meets any of the criteria in paragraphs (a) through (e) of this section.

§ 30.11 Use of solicitation provisions and contract clauses.

(a) Unless the President or the Secretary waives the restrictions imposed by section 109(a) of the Continuing Resolution in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contractions and solicitations, if—

(1) The contract is awarded on or after December 22, 1987, and before October 1, 1988; and

(2) The contract obligates funds appropriated for use in FY 1988 by the Continuing Resolution or any other law; and

(3) The contract is for the acquisition of construction, alteration and repair, architectural, engineering, or other services directly related to the preparation for, or performance of, construction, alteration, and repair for Federal public works projects inside the United States, U.S. territories, or U.S. possessions.

(b) Unless the Secretary waives the restrictions imposed by section 115 of the Airport Safety Act in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contracts and solicitations relating to any project for which funds, including grant funds, are made available by that Act, whether or not the contract is awarded during fiscal year 1988.

(c) Any contract already awarded that should have contained the clause prescribed in paragraph (a) or (b) of this section, but did not, shall be modified to include the clause. In the event that the contracting officer is unable to modify such contract, the contract shall be canceled at no cost to the Government, unless a waiver is granted in accordance with § 30.17 of this part.

(d) Contracting officers shall insert a provision similar to the solicitation provision at § 30.13 of this part, Restrictions on Public Works Projects—Certification, in solicitations containing the clause at § 30.15 of this part, Restrictions on Federal Public Works Projects.

(e) Any solicitation issued before December 22, 1987, that will result in the award of a contract covered by paragraph (a) of this section after December 22, 1987, and before October 1, 1988, and that should have contained a provision similar to that § 30.13 of this part, but did not, shall be amended to include the provision if the contract has not yet been awarded.

§ 30.13 Restrictions on Federal public works projects: Certification.

As prescribed in § 30.11(c) of this part, the contracting officer shall insert the following provision in solicitations containing the clause at § 30.15, *Restrictions on Federal Public Works Projects*:

RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS—CERTIFICATION

(a) Definitions. The definitions pertaining to this provision are those that are set forth in 49 CFR 30.7-30.9.

(b) Certification. By signing this solicitation, the Offeror certifies that with respect to this solicitation, and any resultant contract, the Offeror—

(1) Is [ ] is not [ ] a contractor of a foreign country included on the list of countries that discriminated against U.S. firms published by the Office of the United States Trade Representative (U.S.T.R.);

(2) Has [ ] has not [ ] entered into any contract or subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; and

(3) Has [ ] has not [ ] entered into any subcontract for any product to be used on the Federal public works project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(c) Applicability of 18 U.S.C. 1001. This certification in this solicitation provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(d) Notice. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(e) Restrictions on contract award. No contract will be awarded to an offeror (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list; unless a waiver to these restrictions is granted by the President of the United States or the Secretary of Transportation. (Notice of the granting of a waiver will be published in the FEDERAL REGISTER.)

(f) System. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (b) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(g) Subcontracts. The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this solicitation provision, including this paragraph (g), in each solicitation issued under such contract.

[end of provision]

§ 30.15 Restrictions on Federal public works projects.

The contracting officer shall insert the following clause in solicitations and contracts as prescribed at § 30.11(a) through (b) of this part:

RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS

(a) *Definitions.* The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7—30.9

(b) *General.* This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223.

(c) *Restrictions.* The Contractor shall not knowingly enter into any subcontract under this contract: (1) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or (2) for the supply of any product for use on the Federal Public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(d) *Certification.* The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the contractor has knowledge that the certification is erroneous.

(e) Erroneous certification. The certification in paragraph (b) of the provision entitled "Restriction on Federal Public Works Projects—Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may cancel this contract for default at no cost to the Government.

(f) Cancellation. Unless the restrictions of this clause are waived as provided in paragraph (e) of the provision entitled "Restriction on Federal Public Works Projects—Certification," if the Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contracting Officer may cancel this contract for default, at no cost to the Government.

(g) Subcontracts. The Contractor shall incorporate this clause, without modification, including this paragraph (g) in all solicitations and subcontracts under this contract:

CERTIFICATION REGARDING RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS—SUBCONTRACTORS

(1) The Offeror/Contractor, by submission of an offer and/or execution of a contract certifies that the Offeror/Contractor is (i) not an Offeror/Contractor owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) The Offeror shall provide immediate written notice to the Contractor if, at any time, the Offeror learns that its certification was erroneous by reason of changed circumstances.

(3) The Contractor shall not knowingly enter into any subcontract under this contract: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The contractor may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

(4) Unless the restrictions of this clause have been waived under the contract for the Federal public works project, if a contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the Federal public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the Government.

(5) Definitions. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7—30.9.

(6) The certification in paragraph (g)(1) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this subcontract at no cost to the Government.

(7) The Contractor agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this clause.

[end of clause]

§ 30.17 Waivers.

(a) The Secretary may waive the restrictions imposed by section 115 of the Airport Safety Act on the use of a product or service in a project if the Secretary determines that:

(1) Application of the restriction to such product, service, or project would not be in the public interest;

(2) Products or services of the same class or kind are not produced or offered in the United States, or in any foreign country that is not listed by the U.S.T.R. in sufficient and reasonable available quantities and of a satisfactory quality; or

(3) Exclusion of such product or service from the project would increase the cost of the overall project contract by more than 20 percent.

(b) The President or the Secretary may waive the restrictions imposed by section 109(a) of the Continuing Resolution with respect to an individual contract if the President or the Secretary determines that such action is necessary in the public interest, on a contract-by-contract basis. The Secretary may apply the factors listed in paragraphs (a)(2) and (a)(3) of this section in determining whether a waiver is in the public interest.

(c) The authority of the President or the Secretary to issue waivers may not be delegated. The Department shall publish notice of any waiver granted pursuant to this part by the President or the Secretary in the FEDERAL REGISTER within ten days. The notice shall describe in detail the contract involved, the specific reasons for granting the waiver, and how the waiver meets the criteria of this section.

§ 30.19 Buy American Act.

The restrictions of this part are in addition to any other restrictions contained in Federal law, including the Buy American Act, 41 U.S.C. 10a-10d, and Buy American provisions in legislation governing DOT provisions. Normal evaluation methods for implementing the provisions of the Buy American Act in contracts for the construction, alteration, or repair of public buildings or public works will be applied after determining the offeror's eligible for award on the basis of application of the provisions in this part.

PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.
31.1 Basis and purpose.
31.2 Definitions.
Sec.
31.3 Basis for civil penalties and assessments.
31.4 Investigation.
31.5 Review by the reviewing official.
31.6 Prerequisites for issuing a complaint.
31.7 Complaint.
31.8 Service of complaint.
31.9 Answer.
31.10 Default upon failure to answer.
31.11 Referral of complaint and answer to the ALJ.
31.12 Notice of hearing.
31.13 Parties to the hearing.
31.14 Separation of functions.
31.15 Ex parte contacts.
31.16 Disqualification of reviewing official or ALJ.
31.17 Rights of parties.
31.18 Authority of the ALJ.
31.19 Prehearing conferences.
31.20 Disclosure of documents.
31.21 Discovery.
31.22 Exchange of witness lists, statements, and exhibits.
31.23 Subpoenas for attendance at hearing.
31.24 Protective order.
31.25 Fees.
31.26 Filing, form, and service of papers.
31.27 Computation of time.
31.28 Motions.
31.29 Sanctions.
31.30 The hearing and burden of proof.
31.31 Determining the amount of penalties and assessments.
31.32 Location of hearing.
31.33 Witnesses.
31.34 Evidence.
31.35 The record.
31.36 Post-hearing briefs.
31.37 Initial decision.
31.38 Reconsideration of initial decision.
31.39 Appeal to authority head.
31.40 Stays ordered by the Department of Justice.
31.41 Stay pending appeal.
31.42 Judicial review.
31.43 Collection of civil penalties and assessments.
31.44 Right to administrative offset.
31.45 Deposit in Treasury of United States.
31.46 Compromise or settlement.
31.47 Limitations.

AUTHORITY: 31 U.S.C. 3801-3812.

SOURCE: 53 FR 881, Jan. 14, 1988, unless otherwise noted.

§ 31.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the authority or to certain others, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 31.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Transportation.

Authority head means the Assistant Secretary or Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 31.7.

Defendant means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Transportation or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose pro se appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

Reviewing official means the Deputy General Counsel of the Department of Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or bid or proposal for a contract with; or

(2) A grant, loan, or benefit from,

the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 31.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 31.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 31.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 31.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 31.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 31.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 31.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 31.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 31.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 31.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 31.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 31.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 31.8

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 31.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 31.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service of a complaint is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 31.9 Answer.

(a) The defendant may request a hearing by serving an answer on the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. Service of an answer is complete upon such delivery or mailing. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, serve on the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to serve an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly the complaint, the general answer denying liability, and the request for an extension of time as provided in § 31.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days from the original due date within which to serve an answer meeting the requirements of paragraph (b) of this section.

§ 31.10 Default upon failure to answer.

(a) If the defendant does not answer within the time prescribed in § 31.9(a), the reviewing official may refer the complaint to an ALJ by filing the complaint and a statement that defendant has failed to answer on time.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 31.8, a notice that an initial decision will be issued under this section.

(c) In addition, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to answer on time is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the time, the ALJ shall send a copy of such notice to the representative for the Government and shall file a copy with the Docket Clerk.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 31.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provisions does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 31.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or

her review of the initial decision upon appeal, if any.

§ 31.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 31.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 31.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 31.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 31.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the serving of an answer pursuant to § 31.9.

§ 31.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 31.22 and 31.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion shall be accompanied by a copy of the request for production of documents, request for admissions, or interrogatories, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 31.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 31.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 31.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 31.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 31.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list of any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 31.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall be accompanied by a proposed subpoena, which shall specify and documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 31.8. A subpoena on a party or upon an individual under the control of party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

§ 31.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously submit to the ALJ specified documents

or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 31.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 31.26 Filing, form, and service of papers.

(a) *Filing and form.* (1) A party filing any document under this part shall submit (i) the original and two copies to the Docket Clerk, Documentary Services Division (C-55), Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590; and (ii) two copies simultaneously to the ALJ or, if on appeal, to the authority head. The requirements of this paragraph apply to all filings under this part, regardless of whether there is a cross-reference to § 31.26.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Docket Clerk, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone nunber of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 31.8 shall be made by delivering a copy, or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 31.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the United States mail, an additional five days will be added to the the time permitted for any responses.

§ 31.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing response thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) Except as provided by §§ 31.21(e)(3) and 31.23(f), which concern subpoenas, the filing or pendency of a motion shall not automatically alter or extend a deadline or return date.

§ 31.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraph (c), (d), and (e) of this section. Any such sanction shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposition penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 31.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 31.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendent's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 31.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false fictitious, of fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 31.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present written and oral argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 31.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 31.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party (i) appearing for the entity pro se or (ii) designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 31.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected at the offices of the Docket Clerk (see § 31.26(a)(1) for address) and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 31.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 31.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.31.

(c) The ALJ shall promptly serve the intitial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the intitial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 31.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 31.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 31.39.

§ 31.39 Appeal to authority head.

(a) Any defendant who has served a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal in accordance with this section and § 31.26.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 31.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal and the time for filing motions for reconsideration under § 31.38 has expired, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 31.3 is final and is not subject to judicial review.

§ 31.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 31.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 31.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 31.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 31.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 31.42 or § 31.43, or any amount agreed upon in a compromise or settlement under § 31.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 31.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 31.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 31.42 or during the pendency of any action to collect penalties and assessments under § 31.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 31.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 31.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 31.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 31.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

Sec.
40.1 Applicability.
40.3 Definitions.
40.5—40.19 [Reserved]
40.21 The drugs.
40.23 Preparation for testing.
40.25 Specimen collection procedures.
40.27 Laboratory personnel.
40.29 Laboratory analysis procedures.
40.31 Quality assurance and quality control.
40.33 Reporting and review of results.
40.35 Protection of employee records.
40.37 Individual access to test and laboratory certification results.
40.39 Use of DHHS—certified laboratories.
APPENDIX A TO PART 40—DRUG TESTING CUSTODY AND CONTROL FORM

AUTHORITY: 49 U.S.C. 102, 301, 322.

SOURCE: 54 FR 49866, Dec. 1, 1989, unless otherwise noted.

§ 40.1 Applicability.

This part applies to transportation employers (including self-employed individuals) conducting drug urine testing programs pursuant to regulations issued by agencies of the Department of Transportation and to such transportation employers' officers, employees, agents and contractors, to the extent and in the manner provided in DOT agency regulations.

§ 40.3 Definitions.

For purposes of this part the following definitions apply:

Aliquot. A portion of a specimen used for testing.

Blind sample or blind performance test specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Chain of custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

Collection container. A container into which the employee urinates to provide the urine sample used for a drug test.

Collection site. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs

Collection site person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency. An agency (or "operating administration") of the United States Department of Transportation administering regulations requiring compliance with this part, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Urban Mass Transportation Administration and the Research and Special Programs Administration.

Employee. An individual designated in a DOT agency regulation as subject to drug urine testing and the donor of a specimen under this part. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

Employer. An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, "employer" includes an industry consortium or joint enterprise comprised of two or more employing entities, but no single employing entity is relieved of its responsibility for compliance with this part by virtue of participation in such a consortium or joint enterprise.

Initial test (also known as screening test). An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Secretary. The Secretary of Transportation or the Secretary's designee.

Shipping container. A container capable of being secured with a tamper proof seal that is used for transfer of one or more specimen bottle(s) and associated documentation from the collection site to the laboratory.

Specimen bottle. The bottle which, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

§§ 40.5—40.19 [Reserved]

§ 40.21 The drugs.

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the DHHS has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

§ 40.23 Preparation for testing.

The employer and certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a) Utilization of a standard drug testing custody and control form (carbonless manifold). The form shall be a multiple-part, carbonless record form with an original (copy 1), and a "second original" (copy 2), both of which shall accompany the specimen to the laboratory. Copies shall be provided for the Medical Review Officer (copy 3, to go directly to the MRO), the donor (copy 4), the collector (copy 5), and the employer representative (copy 6). If the employer desires to exercise the split sample option, then an additional copy of the urine custody and control form is required. This copy (copy 7) shall be the "split specimen original," and is to accompany the split specimen to the same lab, a second lab, or an employer storage site. There must be a positive link established between the first specimen and the split specimen through the specimen identification number; the split specimen identification number shall be an obvious derivative of the first specimen identification number. The form should be a permanent record on which identifying data on the donor, and on the specimen collection and transfer process, is retained. The form shall be constructed to display, at a minimum, the following elements, which shall appear on its respective parts as indicated:

(1) The following information shall appear on all parts of the form:

(i) A preprinted specimen identification number, which shall be unique to the particular collection. If the split sample option is exercised, the preprinted specimen identification number for split specimen shall be an obvious derivative of the first specimen; e.g., first specimen identification number suffixed "A," split specimen suffixed "B."

(ii) A block specifying the donor's employee identification number or Social Security number, which shall be entered by the collector.

(iii) A block specifying the employer's name, address, and identification number.

(iv) A block specifying the Medical Review Officer's name and address.

(v) Specification for which drugs the specimen identified by this form will be tested.

(vi) Specification for the reason for which this test conducted (preemployment, random, etc.), which shall be entered by the collector.

(vii) A block specifying whether or not the collector read the temperature within 4 minutes, and then notation, by the collector, that the temperature of specimen just read is within the range of 32.5-37.7C/90.5-99.8F; if not within the acceptable range, an area is provided to record the actual temperature.

(viii) A chain-of-custody block providing areas to enter the following information for each transfer of possession: Purpose of change; released by (signature/print name); received by (signature/print name); date. The words "Provide specimen for testing" and "DONOR" shall be preprinted in the initial spaces.

(ix) Information to be completed by the collector: Collector's name; date of collection; location of the collection site; a space for remarks at which unusual circumstances may be described; notation as to whether or not the split specimen was taken in accordance with Federal requirements *if* the option to offer the split specimen was exercised by the employer; and a certification statement as set forth below and a signature block with date which shall be completed by the collector:

> I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(2) Information to be provided by the laboratory after analysis, which shall appear on parts 1, 2 and 7 (if ap-

plicable) of the form only: Accession number; laboratory name; address; a space for remarks; specimen results; and certification statement as set forth below, together with spaces to enter the printed name and signature of the certifying laboratory official and date:

> I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

(3) A block to be completed by the Medical Review Officer (MRO), after the review of the specimen, which shall appear on parts 1, 2 and 7 (if applicable) of the form only, provides for the MRO's name, address, and certification, to read as follows, together with spaces for signature and date:

> I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is:

(4) Information to be provided by the donor, which shall appear on parts 3 through 6 of the form only: Donor name (printed); daytime phone number; date of birth; and certification statement as set forth below, together with a signature block with date which shall be completed by the donor.

> I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

(5) A statement to the donor which shall appear only on parts 3 and 4 of the form, as follows:

> Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor) of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

A form meeting the requirements of this paragraph is displayed at appendix A to this part.

(6) The drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

(b)(1) Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A clean, single-use collection container (e.g., disposable cup or sterile urinal) that is securely wrapped until used may also be employed. *If urination is directly into the specimen bottle,* the specimen bottle shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided. *If a separate collection container is used for urination,* the collection container shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided; and the collection site person shall unwrap the specimen bottle in the presence of the employee at the time the urine specimen is presented.

(2) Use of a tamperproof sealing system, designed in a manner such to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space shall be provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more preprinted labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialled to prevent undetected tampering. In the split specimen option is exercised, the split specimen and associated paperwork shall be sealed in a shipping (or storage) container and initialled to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required in this part

(i) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person is provided instructions described in this part and performs collections in accordance with those instructions.

(ii) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with this part. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(3) Unless it is impracticable for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee. If the rules of a DOT agency are more stringent than this provision regarding the use of supervisors as collection site personnel, the DOT agency rules shall prevail with respect to testing to which they apply.

(4) In any case where a collection is monitored by non-medical personnel or is directly observed, the collection site person shall be of the same gender as the donor. A collection is monitored for this purpose if the enclosure provides less than complete privacy for the donor (e.g., if a restroom stall is used and the collection site person remains in the restroom, or if the collection site person is expected to listen for use of unsecured sources of water.)

§ 40.25 Specimen collection procedures.

(a) *Designation of collection site.* (1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of uring specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other applicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) *Security.* The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) *Chain of custody.* The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person and ensure against any confusion in the identification of specimens, the collection site person shall have only one donor under his or her supervision at any time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialled, the drug testing custody and control form has been executed, and the employee has departed the site (or, in the case of an employee who was unable to provide a complete specimen, has entered a waiting area).

(e) *Privacy.* (1) Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range (32.5°-37.7 °C/90.5°-99.8 °F), and

(A) The employee declines to provide a measurement of oral body temperature, as provided in paragraph (f)(14) of the part; or

(B) Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen;

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

(3) A higher-level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection

site person based upon the circumstances described in subparagraph (2) of this paragraph.

(f) *Integrity and identity of specimen.* Employers shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water (e.g., shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container, if applicable, for this purpose.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10)(i) Upon receiving the specimen from the individual, the collection site person shall determine if it contains at least 60 milliliters of urine. If the individual is unable to provide a 60 milliters of urine, the collection site person shall direct the individual to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle (and fresh collection container, if employed). The original specimen shall be discarded. If the employee is still unable to provide a complete specimen, the following rules apply:

(A) In the case of a post-accident test or test for reasonable cause (as defined by the DOT agency), the employee shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to 8 hours from the beginning of the collection procedure.

(B) In the case of a preemployment test, random test, periodic test or other test not for cause (as defined by the DOT agency), the employer may elect to proceed as specified in paragraph (f)(10)(i)(A) of this section (consistent with any applicable restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time.

(C) If the employee cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the employer's MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

(ii) The employer may, but is not required to, use a "split sample" method of collection.

(A) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, after determining specimen temperature, pours into two specimen bottles.

(B) The first bottle is to be used for the DOT-mandated test, and 60 ml of urine shall be poured into it. If there is no additional urine available for the second specimen bottle, the first specimen bottle shall nevertheless be processed for testing.

(C) Up to 60 ml of the remainder of the urine shall be poured into the second specimen bottle.

(D) All requirements of this part shall be followed with respect to both samples, including the requirement that a copy of the chain of custody form accompany each bottle processed under "split sample" procedures.

(E) Any specimen collected under "split sample" procedures must be stored in a secured, refrigerated environment and an appropriate entry made in the chain of custody form.

(F) If the test of the first bottle is positive, the employee may request that the MRO direct that the second bottle be tested in a DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first bottle. The result of this test is transmitted to the MRO without regard to the cutoff values of § 40.29. The MRO shall honor such a request if it is made within 72 hours of the employee's having actual notice that he or she tested positive.

(G) Action required by DOT regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the second test.

(H) If the result of the second test is negative, the MRO shall cancel the test.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) A specimen temperature outside the range of 32.5°-37.7 °C/90.5°-99.8 °F constitutes a reason to believe that the individual has altered or substituted the specimen (see paragraph (e)(2)(i)

of this section). In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in paragraph (e)(2) (i) or (iii) of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual being tested shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamperproof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.

(22)(i) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided.

(ii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.

(24) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

(25)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him or her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) *Collection control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

(h) *Transportation to laboratory.* Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.

(i) *Failure to cooperate.* If the employee refuses to cooperate with the collection process, the collection site person shall inform the employer representative and shall document the non-cooperation on the drug testing custody and control form.

(j) *Employee requiring medical attention.* If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.

(k) *Use of chain of custody forms.* A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

§ 40.27 Laboratory personnel.

(a) *Day-to-day management.* (1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by a State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), or (iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in § 40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) *Test validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-day operations and supervision of analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience, certification or license if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

§ 40.29 Laboratory analysis procedures.

(a) *Security and chain of custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of DHHS, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) *Short-term refrigerated storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test cutoff levels (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(f) *Confirmatory test.* (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite[1]	15
Cocaine metabolite[2]	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.

[2] Benzoylecgonine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) *Reporting results.* (1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. *Provided,* that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide to the employer official responsible for coordination of the drug testing program a monthly statistical summary of urinalysis testing of the employer's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamine

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite
Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the employer in writing.

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-term storage.* Long-term frozen storage (−20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

(i) *Retesting specimens.* Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by DHHS as required in this part, the subcontractor performs all analysis and provides storage required under this part, and the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor.

(k) *Laboratory facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensing requirements.

(2) Laboratories certified in accordance with DHHS Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agent) to conduct unannounced inspections.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

(n) *Additional requirements for certified laboratories.*—(1) *Procedure manual.* Each laboratory shall have a procedure manual which includes the principles of each test preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of methods, cutoff values, mechanisms for reporting results, controls criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) *Instruments and equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel available to testify at proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

§ 40.31 Quality assurance and quality control.

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) *Laboratory quality control requirements for initial tests.* Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level.

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure the carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) *Laboratory quality control requirements for confirmation tests.* Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level. The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) *Employer blind performance test procedures.*

(1) Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(3) For employers with 2000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drug or otherwise as approved by a DOT agency) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systemic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality con-

trol data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an onsite review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

§ 40.33 Reporting and review of results.

(a) *Medical review officer shall review confirmed positive results.* (1) An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

(2) The duties of the MRO with respect to negative results are purely administrative.

(b) *Medical review officer—qualifications and responsibilities.* (1) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.

(2) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.

(3) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results or urine samples that are not obtained or processed in accordance with this part.

(c) *Positive test result.* (1) Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.

(2) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

(3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management

official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

(4) If, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative; or

(iii) Other circumstances provided for in DOT agency drug testing regulations.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(ii) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(7) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

(d) *Verification for opiates; review for prescription medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) *Reanalysis authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The Medical Review Officer shall authorize a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having received actual notice of the positive test. If the retest is negative, the MRO shall cancel the test.

(f) *Result consistent with legal drug use.* If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the employer as negative.

(g) *Result scientifically insufficient.* Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. (The MRO may request that reanalysis as provided in § 40.33(e) be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the employer. The employer shall include in any required annual report to a DOT agency a summary of any negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

(h) *Disclosure of information.* Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if—

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

§ 40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

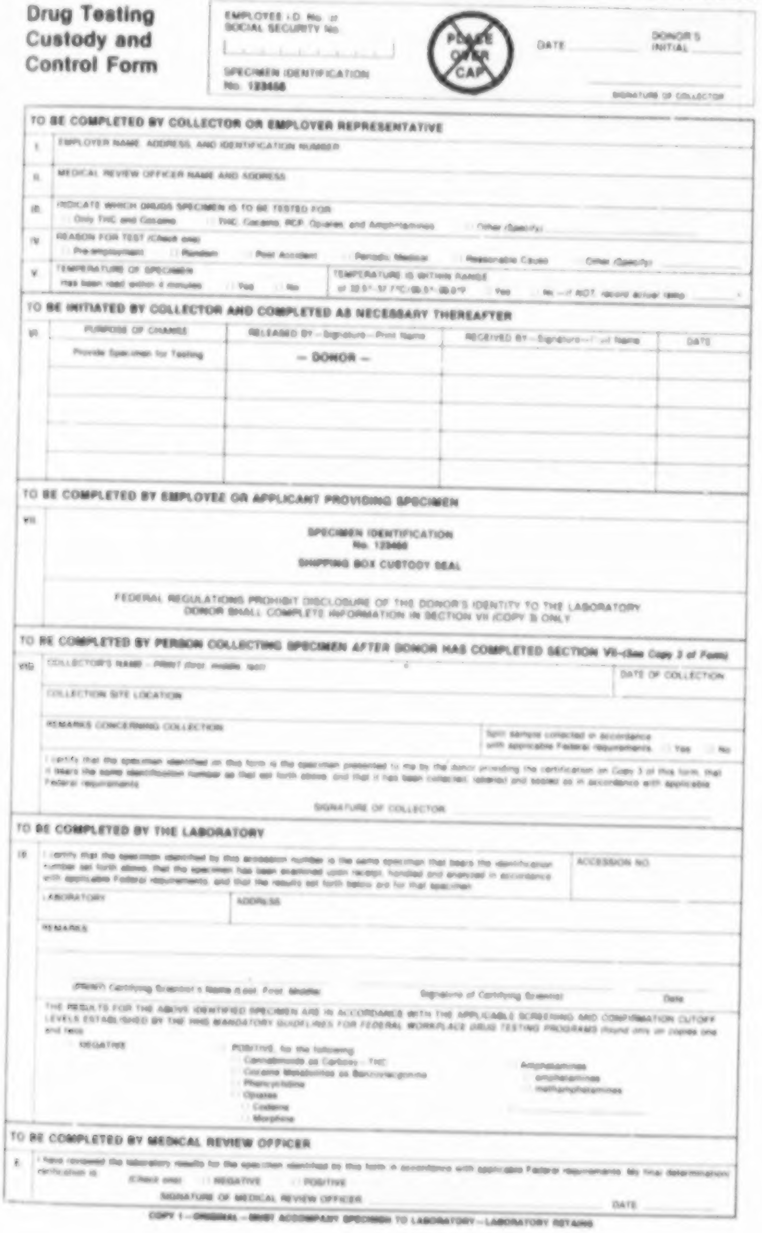
§ 40.37 Individual access to test and laboratory certification results.

Any employee who is the subject of a drug test conducted under this part shall, upon wirtten request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

§ 40.39 Use of DHHS—certified laboratories.

Employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988, and subsequent amendments thereto.

APPENDIX A TO PART 40—DRUG TESTING CUSTODY AND CONTROL FORM



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

PLACE OVER CAP

DATE ______ DONOR'S INITIAL ______

SIGNATURE OF COLLECTOR

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other (Specify) ______

IV. REASON FOR TEST (Check one)
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other (Specify) ______

V. TEMPERATURE OF SPECIMEN has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE of 32.5°–37.7°C/90.5°–99.8°F ☐ Yes ☐ No—If NOT, record actual temp. ______

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Full Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII.

SPECIMEN IDENTIFICATION
No. 123456
SHIPPING BOX CUSTODY SEAL

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY
DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 3) ONLY

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN AFTER DONOR HAS COMPLETED SECTION VII—(See Copy 3 of Form)

VIII. COLLECTOR'S NAME—PRINT (first, middle, last) DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR ______

TO BE COMPLETED BY THE LABORATORY

IX. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen. ACCESSION NO.

LABORATORY ADDRESS

REMARKS

(PRINT) Certifying Scientist's Name (Last, First, Middle) Signature of Certifying Scientist Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE HHS MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS (found only on copies one and two)

☐ NEGATIVE

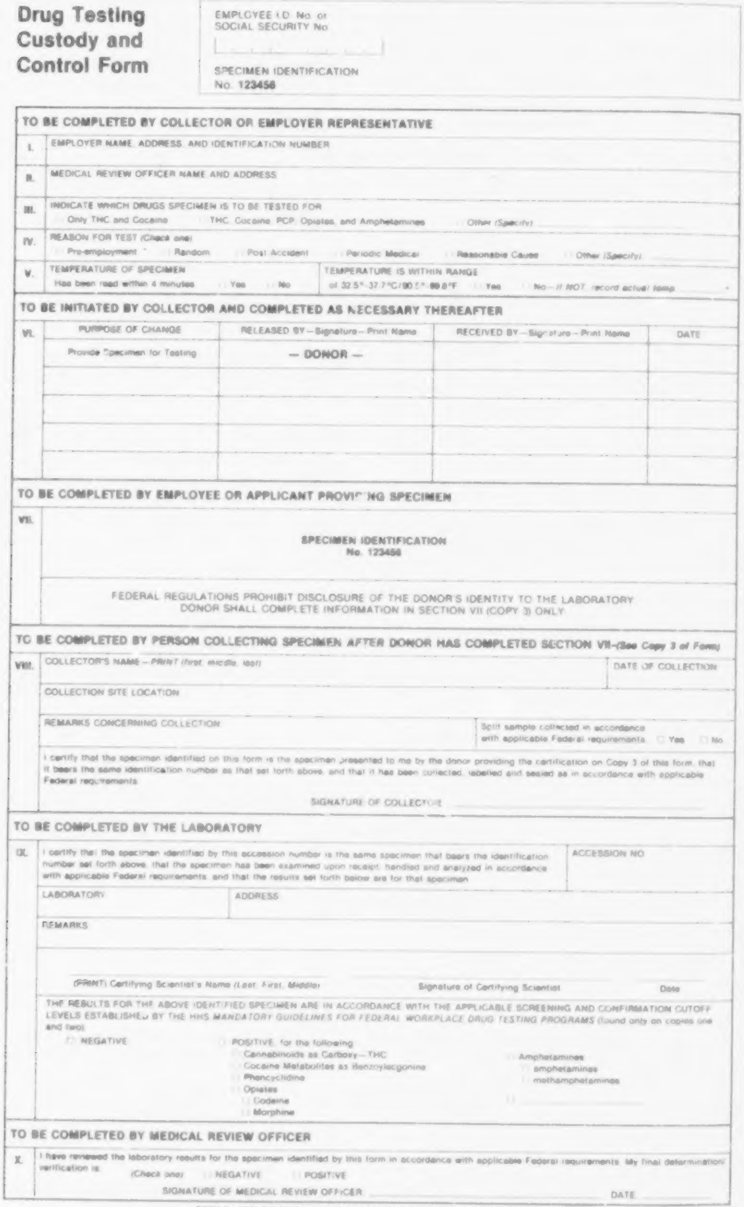
☐ POSITIVE, for the following:
- ☐ Cannabinoids as Carboxy-THC
- ☐ Cocaine Metabolites as Benzoylecgonine
- ☐ Phencyclidine
- ☐ Opiates
  - ☐ Codeine
  - ☐ Morphine
- ☐ Amphetamines
  - ☐ amphetamines
  - ☐ methamphetamines

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is: (Check one) ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER ______ DATE ______

COPY 1—ORIGINAL—MUST ACCOMPANY SPECIMEN TO LABORATORY—LABORATORY RETAINS



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE
of 32.5°–37.7°C/90.5°–99.8°F ☐ Yes ☐ No—*If NOT, record actual temp.*

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII.

SPECIMEN IDENTIFICATION
No. 123456

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY
DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 3) ONLY

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN AFTER DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR

TO BE COMPLETED BY THE LABORATORY

IX. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

ACCESSION NO.

LABORATORY

ADDRESS

REMARKS

(PRINT) Certifying Scientist's Name *(Last, First, Middle)* Signature of Certifying Scientist Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS* (found only on copies one and two)

☐ NEGATIVE

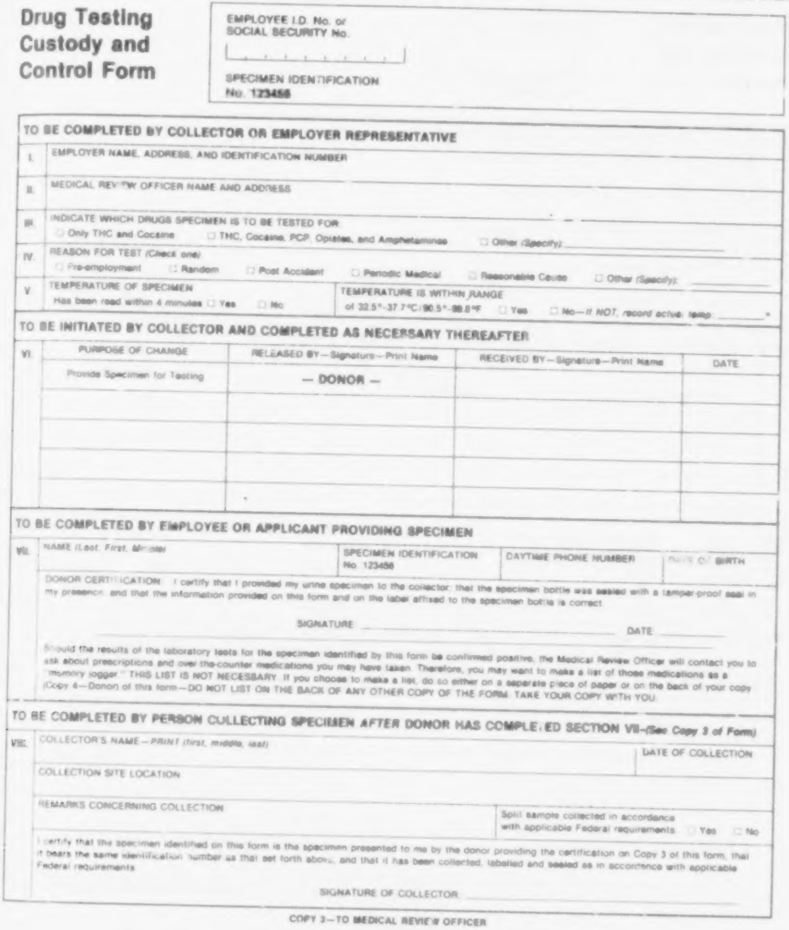
☐ POSITIVE, for the following
- ☐ Cannabinoids as Carboxy—THC
- ☐ Cocaine Metabolites as Benzoylecgonine
- ☐ Phencyclidine
- ☐ Opiates
  - ☐ Codeine
  - ☐ Morphine
- ☐ Amphetamines
  - ☐ amphetamines
  - ☐ methamphetamines
- ☐

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is: *(Check one)* ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER DATE

COPY 2—2ND ORIGINAL—MUST ACCOMPANY SPECIMEN TO LABORATORY
LAB SENDS TO MRO WITH TEST RESULTS IN SECT. IX



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*: ______

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)*: ______

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No

TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp:* ______°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)*

SPECIMEN IDENTIFICATION No. 123456

DAYTIME PHONE NUMBER

DATE OF BIRTH

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE ______ DATE ______

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor) of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII–*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

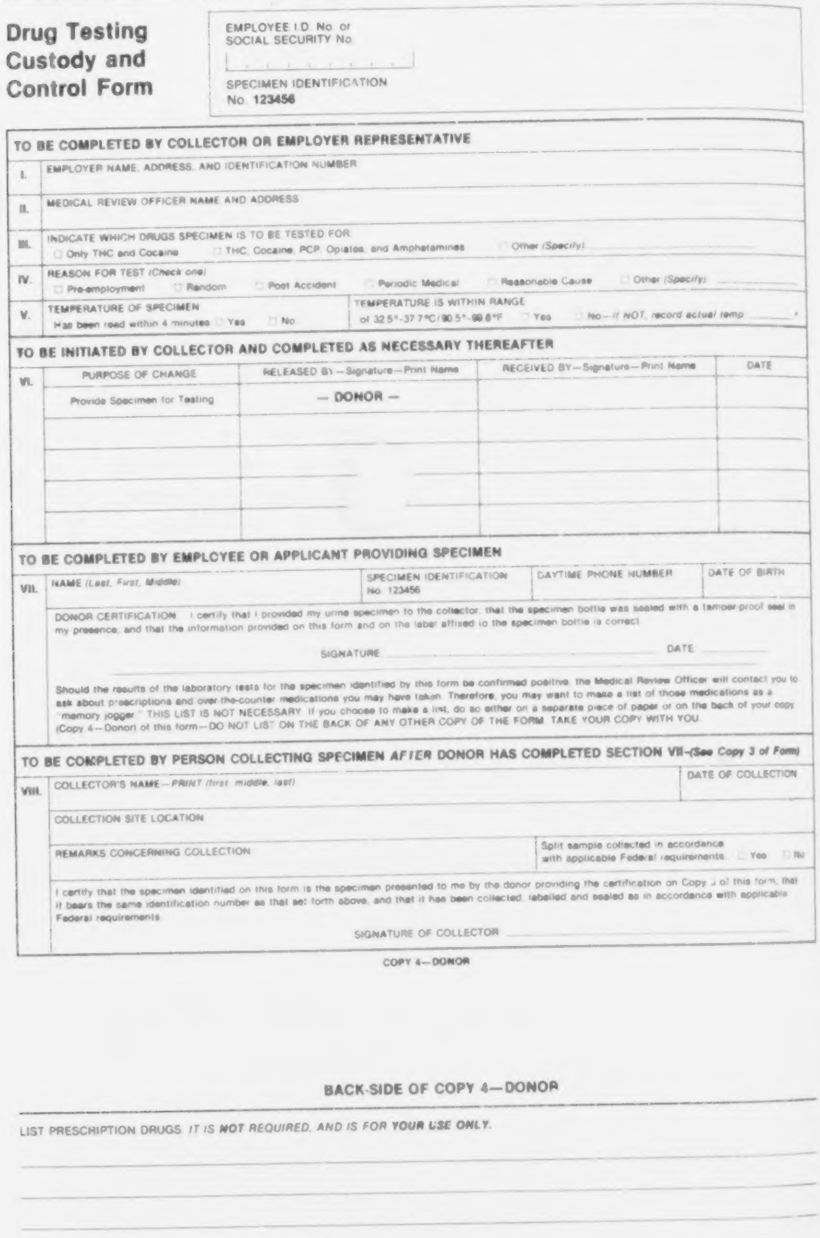
REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR ______

COPY 3—TO MEDICAL REVIEW OFFICER



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. **123456**

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)* ______

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)* ______

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No

TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp* ______°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.	PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
	Provide Specimen for Testing	**— DONOR —**		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)*

SPECIMEN IDENTIFICATION No. 123456

DAYTIME PHONE NUMBER

DATE OF BIRTH

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE ______ DATE ______

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4—Donor) of this form—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

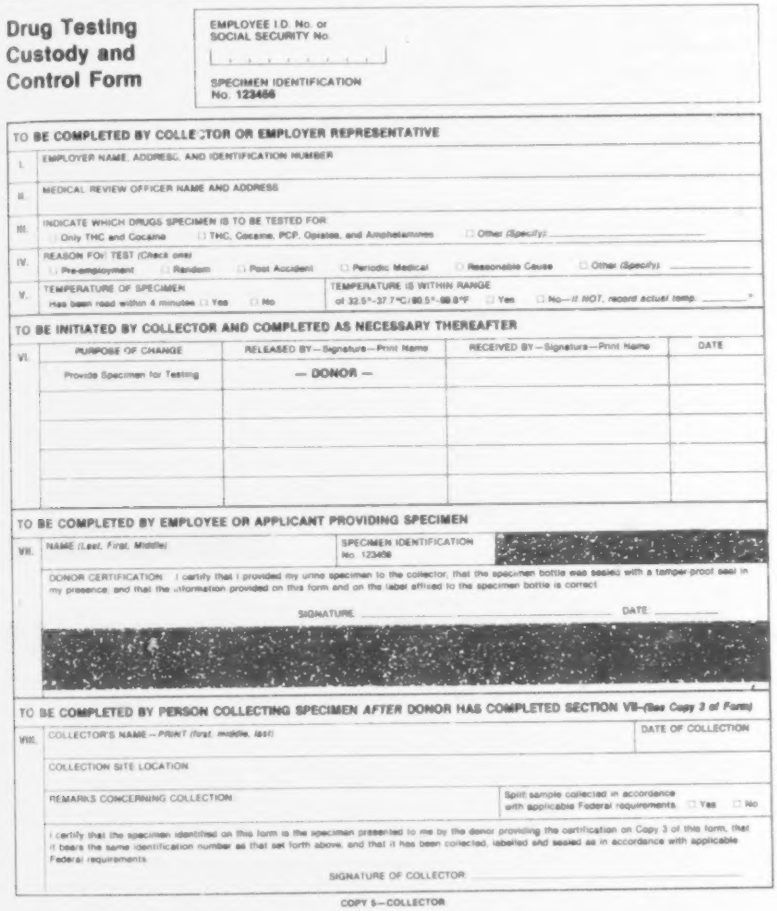
I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR ______

COPY 4—DONOR

BACK-SIDE OF COPY 4—DONOR

LIST PRESCRIPTION DRUGS. *IT IS **NOT** REQUIRED, AND IS FOR **YOUR USE ONLY**.*



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)*: ______

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)* ______

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No

TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp.* ______°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME *(Last, First, Middle)*

SPECIMEN IDENTIFICATION No. 123456

DONOR CERTIFICATION I certify that I provided my urine specimen to the collector, that the specimen bottle was sealed with a tamper-proof seal in my presence, and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE ______ DATE ______

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—PRINT *(first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

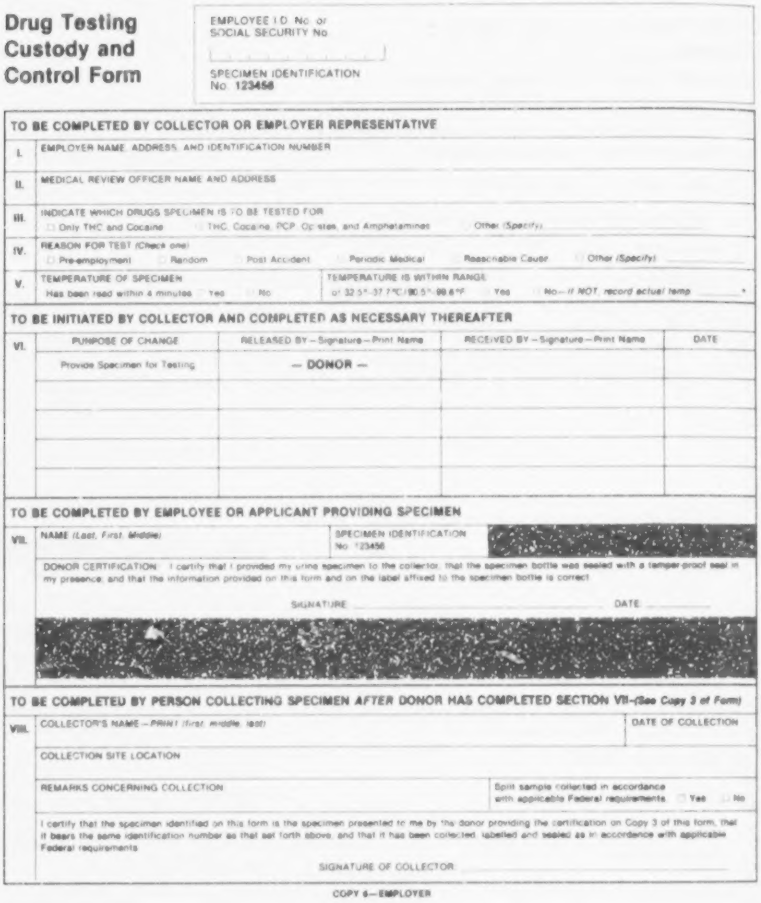
REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements. ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR: ______

COPY 5—COLLECTOR



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other (*Specify*) ____

IV. REASON FOR TEST (*Check one*)
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other (*Specify*) ____

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No
TEMPERATURE IS WITHIN RANGE
of 32.5°-37.7°C/90.5°-99.8°F ☐ Yes ☐ No—*If NOT, record actual temp* ____°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.	PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
	Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII. NAME (*Last, First, Middle*)

SPECIMEN IDENTIFICATION No. 123456 [redacted]

DONOR CERTIFICATION: I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

SIGNATURE ____ DATE ____

[redacted]

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—*PRINT (first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

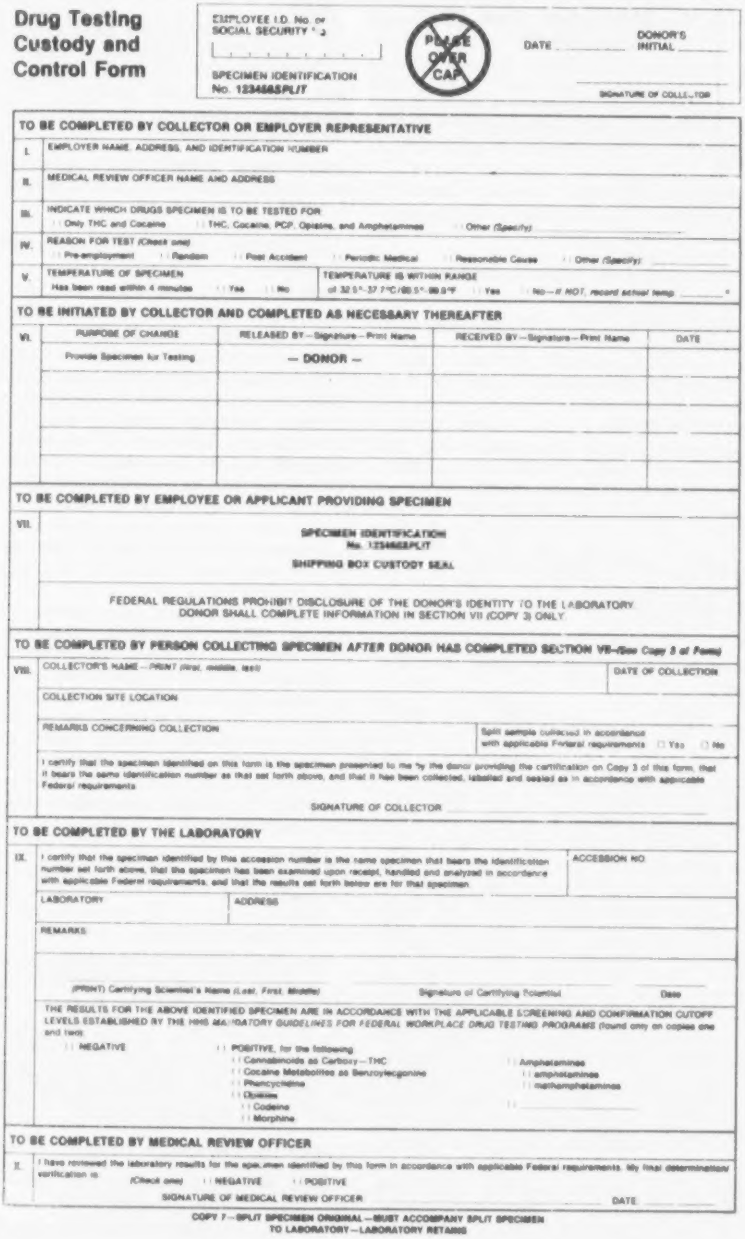
REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR ____

COPY 6—EMPLOYER



Drug Testing Custody and Control Form

EMPLOYEE I.D. No. or SOCIAL SECURITY No.

SPECIMEN IDENTIFICATION No. 123456SPLIT

PLACE OVER CAP

DATE ______ DONOR'S INITIAL ______

SIGNATURE OF COLLECTOR

TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

I. EMPLOYER NAME, ADDRESS, AND IDENTIFICATION NUMBER

II. MEDICAL REVIEW OFFICER NAME AND ADDRESS

III. INDICATE WHICH DRUGS SPECIMEN IS TO BE TESTED FOR:
☐ Only THC and Cocaine ☐ THC, Cocaine, PCP, Opiates, and Amphetamines ☐ Other *(Specify)* ______

IV. REASON FOR TEST *(Check one)*
☐ Pre-employment ☐ Random ☐ Post Accident ☐ Periodic Medical ☐ Reasonable Cause ☐ Other *(Specify)* ______

V. TEMPERATURE OF SPECIMEN
Has been read within 4 minutes ☐ Yes ☐ No

TEMPERATURE IS WITHIN RANGE
of 32.5°–37.7°C/90.5°–99.8°F ☐ Yes ☐ No—*If NOT, record actual temp.* ______°

TO BE INITIATED BY COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

VI.

PURPOSE OF CHANGE	RELEASED BY—Signature—Print Name	RECEIVED BY—Signature—Print Name	DATE
Provide Specimen for Testing	— DONOR —		

TO BE COMPLETED BY EMPLOYEE OR APPLICANT PROVIDING SPECIMEN

VII.

SPECIMEN IDENTIFICATION
No. 123456SPLIT

SHIPPING BOX CUSTODY SEAL

FEDERAL REGULATIONS PROHIBIT DISCLOSURE OF THE DONOR'S IDENTITY TO THE LABORATORY.
DONOR SHALL COMPLETE INFORMATION IN SECTION VII (COPY 3) ONLY.

TO BE COMPLETED BY PERSON COLLECTING SPECIMEN *AFTER* DONOR HAS COMPLETED SECTION VII—*(See Copy 3 of Form)*

VIII. COLLECTOR'S NAME—PRINT *(first, middle, last)*

DATE OF COLLECTION

COLLECTION SITE LOCATION

REMARKS CONCERNING COLLECTION

Split sample collected in accordance with applicable Federal requirements ☐ Yes ☐ No

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

SIGNATURE OF COLLECTOR ______

TO BE COMPLETED BY THE LABORATORY

IX. I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

ACCESSION NO.

LABORATORY

ADDRESS

REMARKS

(PRINT) Certifying Scientist's Name *(Last, First, Middle)*   Signature of Certifying Scientist   Date

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE SCREENING AND CONFIRMATION CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS* (found only on copies one and two).

☐ NEGATIVE

☐ POSITIVE, for the following:
- ☐ Cannabinoids as Carboxy—THC
- ☐ Cocaine Metabolites as Benzoylecgonine
- ☐ Phencyclidine
- ☐ Opiates
  - ☐ Codeine
  - ☐ Morphine
- ☐ Amphetamines
  - ☐ amphetamines
  - ☐ methamphetamines
- ☐ ______

TO BE COMPLETED BY MEDICAL REVIEW OFFICER

X. I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is:
(Check one) ☐ NEGATIVE ☐ POSITIVE

SIGNATURE OF MEDICAL REVIEW OFFICER ______ DATE ______

COPY 7—SPLIT SPECIMEN ORIGINAL—MUST ACCOMPANY SPLIT SPECIMEN
TO LABORATORY—LABORATORY RETAINS

PART 71—STANDARD TIME ZONE BOUNDARIES

Sec.

71.1 Limits defined; exceptions authorized for certain rail operating purposes only.
71.2 Annual advancement of standard time.
71.3 Atlantic zone.
71.4 Eastern zone.
71.5 Boundary line between eastern and central zones.
71.6 Central zone.
71.7 Boundary line between central and mountain zones.
71.8 Mountain zone.
71.9 Boundary line between mountain and Pacific zones.
71.10 Pacific zone.
71.11 Alaska zone.
71.12 Hawaii-Aleutian zone.
71.13 Samoa zone.

AUTHORITY: Secs. 1-4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2-7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-267; Pub. L. 99-359; 49 CFR 1.59(a), unless otherwise noted.

SOURCE: Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, unless otherwise noted.

§ 71.1 Limits defined; exceptions authorized for certain rail operating purposes only.

(a) This part prescribes the geographic limits of each of the eight standard time zones established by section 1 of the Standard Time Act, as amended by section 4 of the Uniform Time Act of 1966 (15 U.S.C. 261). It also contains lists of operating exceptions granted for specified rail carriers, whose operations cross the time zone boundaries prescribed by this part, authorizing them to carry the standard of time on which the major portion of a particular operation is conducted into an adjoining time zone.

(b) Any rail carrier whose operations cross a time zone boundary prescribed by this part may apply for an operating exception to the General Counsel, Department of Transportation, Washington, D.C. 20590. However, each rail carrier for which an operating exception is granted shall, in its advertisements, time cards, station bulletin boards, and other publications, show arrival and departure times in terms of the standard time for the place concerned.

(c) The time zones established by the Standard Time Zone Act, as amended by the Uniform Time Act of 1966, are Atlantic, eastern, central, mountain, Pacific, Alaska, Hawaii-Aleutian, and Samoa.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-21, 52 FR 41631, Nov. 18, 1986]

§ 71.2 Annual advancement of standard time.

(a) The Uniform Time Act of 1966 (15 U.S.C. 260a(a)), as amended, requires that the standard time of each State observing Daylight Saving Time shall be advanced 1 hour beginning at 2:00 a.m. on the first Sunday in April of each year and ending on the last Sunday in October. This advanced time shall be the standard time of each zone during such period. The Act authorizes any State to exempt itself from this requirement. States in two or more time zones may exempt the eastermost time zone portion from this requirement.

(b) Section 3(b) of the Uniform Time Act of 1966 (15 U.S.C. 260a(b)) provides that "it is the express intent of Congress * * * to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in [section 3(a) of that Act]", which are those specified in paragraph (a) of this section.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-21, 52 FR 41631, Nov. 18, 1986]

§ 71.3 Atlantic zone.

The first zone, the Atlantic standard time zone, includes that part of the United States that is between 52°30′ W. longitude and 67°30′ W. longitude and that part of the Commonwealth of Puerto Rico that is west of 67°30′ W. longitude, but does not include any part of the State of Maine.

§ 71.4 Eastern zone.

The second zone, the eastern standard time zone, includes that part of the United States that is west of 67°30′

W. longitude and east of the boundary line described in § 71.5, and includes all of the State of Maine, but does not include any part of the Commonwealth of Puerto Rico.

§ 71.5 Boundary line between eastern and central zones.

(a) *Minnesota-Michigan-Wisconsin.* From the junction of the western boundary of the State of Michigan with the boundary between the United States and Canada northerly and easterly along the west line of Gogebic County to the west line of Ontonagon County; thence south along the west line of Ontonagon County to the north line of Gogebic County; thence southerly and easterly along the north line of Gogebic County to the west line of Iron County; thence north along the west line of Iron County to the north line of Iron County; thence east along the north line of Iron County to the east line of Iron County; thence south along the east line of Iron County to the north line of Dickinson County; thence east along the north line of Dickinson County to the east line of Dickinson County; thence south along the east line of Dickinson County to the north line of Menominee County; thence east along the north line of Menominee County to the east line of Menominee County; thence southerly and easterly along the east line of Menominee County to Lake Michigan; thence east to the western boundary of the State of Michigan; thence southerly and easterly along the western boundary of the State of Michigan to a point in the middle of Lake Michigan opposite the main channel of Green Bay; thence southerly along the western boundary of the State of Michigan to its junction with the southern boundary thereof and the northern boundary of the State of Indiana.

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of La Porte County to the north line of Starke County; thence east along the north line of Starke County to the east line of Starke County; thence south along the east line of Starke County to the south line of Starke County; thence west along the south line of Starke County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Gibson County; thence easterly and southerly along the north line of Gibson County to the east line of Gibson County; thence south along the east line of Gibson County to the north line of Warrick County; thence easterly and southerly along the north lines of Warrick and Spencer Counties to the east line of Spencer County; thence southerly along the east line of Spencer County to the Indiana-Kentucky boundary.

(c) *Kentucky.* From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) line of Taylor County and northeasterly along the east (southeast) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey, Pulaski, and McCreary Counties to the Kentucky-Tennessee boundary.

(d) *Tennessee.* From the junction of the west line of McCreary County, Ky., with the Kentucky-Tennessee boundary westerly along that boundary to the west line of Scott County, Tenn.; thence southerly along the west line of Scott County, the north and west lines of Morgan County, and the north line of Roane County to the north line of Rhea County; thence northwesterly along the north line of Rhea County; and thence southwesterly along the west lines of Rhea and Hamilton Counties to the Tennessee-Georgia boundary.

(e) *Georgia-Alabama.* From the junction of the west line of Hamilton County, Tenn., with the Tennessee-Georgia boundary westerly along that boundary to its junction with the Alabama-Georgia boundary; thence southerly along that boundary and the Florida-Georgia boundary to the southwest corner of the State of Georgia.

(f) *Florida.* From the southwest corner of the State of Georgia to the midpoint of the Apalachicola River on the downstream side of Jim Woodruff Dam; thence southerly along the middle of the main channel of the Apalachicola River to its intersection with the Jackson River; thence westerly along the center of the Jackson River to its intersection with the Intracoastal Waterway; thence westerly along the center of the Intracoastal Waterway to the west line of Gulf County; thence southerly along the west line of Gulf County to the Gulf of Mexico.

(g) [Reserved]

(h) *Municipalities on boundary line.* All municipalities located upon the zone boundary line described in this section are in the central standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-12, 37 FR 11972, June 16, 1972; Amdt. 71-13, 38 FR 9229, Apr. 12, 1973; Amdt. 71-14, 38 FR 13725, May 25, 1973; Amdt. 77-13, 42 FR 56610, Oct. 27, 1977]

§ 71.6 Central zone.

The third zone, the central standard time zone, includes that part of the United States that is west of the boundary line between the eastern and central standard time zones described in § 71.5 and east of the boundary line between the central and mountain standard time zones described in § 71.7.

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of T. 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W.; thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the north line of Morton County; thence west along the north line of Morton County to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 83 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Heart and Missouri Rivers; thence southerly and easterly along the middle of the Missouri River to the northern boundary of T. 130 N., R. 80 W.; thence west to the northwest corner of T. 130 N., R. 80 W.; thence south to the North Dakota-South Dakota boundary; thence easterly along that boundary to the middle of the Missouri River.

(b) *South Dakota.* From the junction of the North Dakota-South Dakota boundary with the Missouri River southerly along the main channel of that river to the crossing of the Chicago & North Western Railway near Pierre; thence southwesterly to the northeast corner of T. 1 S., R. 28 E. in Jones County; thence south along the range line between Rs. 28 and 29 E. to the north line of Mellette County; thence east along the north line of Mellette County to the west line of Tripp County; thence south along the west line of Tripp County to the South Dakota-Nebraska boundary.

(c) *Nebraska*. From the junction of
the west line of Tripp County, South
Dakota with the South Dakota-Ne-
braska boundary west along that
boundary to the west line of R. 30 W.;
thence south along the range line be-
tween Rs. 30 and 31 W. to the south-
west corner of sec. 19, T. 33 N., R. 30
W.; thence easterly along section lines
to the northeast corner of sec. 29, T.
33 N., R. 30 W.; thence southerly along
section lines with their offsets to the
northeast corner of sec. 17, T. 32 N., R.
30 W.; thence westerly along section
lines to the northwest corner of sec.
18, T. 32 N., R. 30 W.; thence southerly
along the range line to the southwest
corner of T. 31 N., R. 30 W.; thence
easterly along the township line to the
northeast corner of T. 30 N., R. 30 W.;
thence southerly along the range line
o the southwest corner of T. 29 N., R.
9 W.; thence westerly along the town-
hip line to the northwest corner of
ec. 4, T. 28 N., R. 30 W.; thence south-
rly along section lines to the south-
est corner of sec. 33, T. 28 N., R. 30
.; thence easterly along the town-
ip line to the northeast corner of
c. 4, T. 27 N., R. 30 W.; thence south-
ly along section lines to the south-
st corner of sec. 22, T. 26 N., R. 30
.; thence easterly along section lines
he southeast corner of sec. 24, T.
N., R. 30 W.; thence southerly along
e range line to the north line of
omas County; thence westerly
ng the north line of Thomas
unty to the west line of Thomas
unty; thence south along the west
e of Thomas County to the north
e of McPherson County; thence
st along the north line of McPher-
County to the west line of
Pherson County; thence south
ng the west line of McPherson
unty to the north line of Keith
unty; thence east along the north
e of Keith County to the west line
Lincoln County; thence south along
west line of Lincoln County to the
th line of Hayes County; thence
t along the north lines of Hayes
County to the west line of Hayes County; thence south along the west line of Hayes and Hitchcock Counties to the Nebraska-Kansas boundary.

(d) *Kansas-Colorado*. From the junction of the west line of Hitchcock County, Nebraska, with the Nebraska-Kansas boundary westerly along that boundary to the northwest corner of the State of Kansas; thence southerly along Kansas-Colorado boundary to the north line of Sherman County, Kansas; thence easterly along the north line of Sherman County to the east line of Sherman County; thence southerly along the east line of Sherman County to the north line of Logan County; thence westerly along the north line of Logan County to the east line of Wallace County; thence southerly along the east line of Wallace County to the north line Wichita County; thence westerly along the north line of Wichita County; thence westerly along the north line of Wichita County to the east line of Greeley County; thence southerly along the east lines of Greeley County and Hamilton Counties; thence westerly along the south line of Hamilton County to the Kansas-Colorado boundary; thence southerly along the Kansas Colorado boundary to the junction of that boundary with the north boundary of the State of Oklahoma.

(e) *Oklahoma-Texas-New Mexico*. From the junction of the Kansas-Colorado boundary with the northern boundary of the State of Oklahoma westerly along the Colorado-Oklahoma boundary to the northwest corner of the State of Oklahoma; thence southerly along the west boundary of the State of Oklahoma and the west boundary of the State of Texas to the southeast corner of the State of New Mexico; thence westerly along the Texas-New Mexico boundary to the east line of Hudspeth County, Tex.; thence southerly along the east line of Hudspeth County, Tex., to the boundary between the United States and Mexico.

(f) [Reserved]

(g) *Points on boundary line*. All municipalities located upon the zone boundary line described in this section are in the mountain standard time zone, except Murdo, S. Dak., which is in the central standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-14, 38 FR 13725, May 25, 1973; Amdt. 71-16, 43 FR 42763, Sept. 21, 1978; 55 FR 30914, July 30, 1990]

EFFECTIVE DATE NOTE: At 55 FR 30914, July 30, 1990, § 71.7 paragraph (d) was revised, effective Oct. 28, 1990. For the convenience of the user, the text remaining in effect until Oct. 28, 1990, is set forth below.

§ 71.7 Boundary line between central and mountain zones.

* * * * *

(d) *Kansas—Colorado.* From the junction of the west line of Hitchcock County, Nebr., with the Nebraska—Kansas boundary westerly along that boundary to the northwest corner of the State of Kansas; thence southerly along the Kansas—Colorado boundary to the north line of Sherman County, Kans.; thence easterly along the north line of Sherman County to the east line of Sherman County; thence southerly along the east line of Sherman County to the north line of Logan County; thence westerly along the north line of Logan County to the east line of Wallace County; thence southerly along the east line of Wallace County to the north line of Wichita County; thence westerly along the nortth line of Wichita County to the east line Greeley County; thence southerly along the east line of Greeley County to the north line of Hamilton County; thence easterly along the north line of Hamilton and Kearny Counties to the junction of the east line of R. 36 W.; thence southerly along the range line between Rs. 35 and 36 W. with its offset to the south line of Kearny County; thence westerly along the south line of Kearny and Hamilton Counties to the Kansas—Colorado boundary; thence southerly along the Kansas—Colorado boundary to the junction of that boundary with the north boundary of the State of Oklahoma.

* * * * *

§ 71.8 Mountain zone.

The fourth zone, the mountain standard time zone, includes that part of the United States that is west of the boundary line between the central and mountain standard time zones described in § 71.7 and east of the boundary line between the mountain and Pacific standard time zones described in § 71.9.

§ 71.9 Boundary line between mountain and Pacific zones.

(a) *Montana-Idaho-Oregon.* From the junction of the Idaho-Montana boundary with the boundary between the United States and Canada southerly along the Idaho-Montana boundary to the boundary line between Idaho County, Idaho, and Lemhi County, Idaho; thence southwesterly along the boundary line between those two counties to the main channel of the Salmon River; thence westerly along the main channel of the Salmon River to the Idaho-Oregon boundary; thence southerly along that boundary to the boundary line between Baker County, Oreg., and Malheur County, Oreg.; thence westerly along the north line of Malheur County to the northwest corner of Malheur County; thence southerly along the west line of Malheur County to the southwest corner of T. 35 S., R. 37 E.; thence east to the Idaho-Oregon boundary; thence south along that boundary to the southwest corner of the State of Idaho; thence easterly along the Idaho-Nevada boundary to the northeast corner of the State of Nevada.

(b) *Utah-Nevada-Arizona-California.* From the northeast corner of the State of Nevada southerly along the Utah-Nevada boundary, the Nevada-Arizona boundary, and the Arizona-California boundary to the boundary between the United States and Mexico.

(c) [Reserved]

(d) *Points on boundary line.* All municipalities located upon the zone boundary line described in this section are in the mountain standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1 1970, as amended by Amdt. 71-14, 38 FR 13725, May 25, 1973]

§ 71.10 Pacific zone.

The fifth zone, the Pacific standard time zone, includes that part of the continental United States that is west of the boundary line between the mountain and Pacific standard time zones described in § 71.9, but does not include any part of the State of Alaska.

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-264; 49 CFR 1.59(a)).

[Amdt. 71-19, 48 FR 43281, Sept. 22, 1983]

§ 71.11 Alaska zone.

The sixth zone, the Alaska standard time zone, includes the entire State of Alaska, except as provided in § 71.12 of this title.

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-264; 49 CFR 1.59(a)).

[Amdt. 71-19, 48 FR 43281, Sept. 22, 1983, as amended by Amdt. 71-20, 48 FR 55289, Dec. 12, 1983]

§ 71.12 Hawaii-Aleutian zone.

The seventh zone, the Hawaii-Aleutian standard time zone, includes the entire State of Hawaii and, in the State of Alaska, that part of the Aleutian Islands that is west of 169 degrees 30 minutes west longitude.

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-264; 49 CFR 1.59(a)).

[Amdt. 71-19, 48 FR 43281, Sept. 22, 1983, as amended by Amdt. 71-20, 48 FR 55289, Dec. 12, 1983]

§ 71.13 Samoa zone.

The eighth zone, the Samoa standard time zone, includes that part of the United States that is between 169 degrees 30 minutes west longitude and 172 degrees 30 minutes west longitude, but does not include any part of the States of Hawaii and Alaska.

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-264; 49 CFR 1.59(a)).

[Amdt. 71-19, 48 FR 43281, Sept. 22, 1983, as amended by Amdt. 71-20, 48 FR 55289, Dec. 12, 1983]

PART 79—MEDALS OF HONOR

Sec.

79.1 Applications and affidavits.
79.2 Character of evidence.
79.3 Investigation by Department.
79.4 Review of evidence; recommendations.
79.5 Award of medals.
79.6 Adoption and revision of designs.
79.7 Time limits for filing.

AUTHORITY: Secs. 1, 2, 33 Stat. 743, as amended; 49 U.S.C. 1201 *et seq.*

SOURCE: 33 FR 19605, Dec. 25, 1968, unless otherwise noted.

§ 79.1 Applications and affidavits.

Applications for medals under the Medals of Honor Act, 33 Stat. 743, as amended by the act of June 13, 1957, 71 Stat. 69 (49 U.S.C. 1201 et seq.), shall be prepared in accordance with, and contain the information called for in, the form of application prescribed by the Department of Transportation consistent with these regulations, or any instructions which may be issued by the Department with respect to the filing of an application. Applications should be addressed to and filed with the Department of Transportation, Washington, D.C. The acts relied upon in the application must be of such a nature that the applicant would not be expected or required to perform such acts in performing the duties of his regular work or vocation. Satisfactory evidence of the facts upon which the application is based must be filed in each case. Such evidence should be in the form of affidavits made by witnesses of good repute and standing, testifying of their own knowledge. The affidavits should be made before an officer duly authorized to administer oaths, and should be accompanied by the certificate of a U.S. official of the district in which the affiants reside, such as a judge or clerk of a U.S. court, a district attorney, or a postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal, his official character must be certified by the proper officer of a court of record under the seal thereof.

§ 79.2 Character of evidence.

The expression by a witness, or witnesses, of the opinion that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient basis for an award, but the affidavits or testimony should set forth the pertinent facts in detail, and show clearly in what manner and to what extent the life of the applicant was endangered and extreme daring manifested by him. The affidavits or testimony should also state the name of the city, town, or village in or near which the incident occurred, the railroad, public highway, road, or street, and the place thereon where the incident occurred, the date, time of day, and condition of the weather, the names and addresses of: (a) The carrier or carriers, or person or persons, involved, (b) the police, fire, or other public officials who investigated the incident, and (c) all persons present, when practicable, and any other pertinent circumstances. These regulations shall not be construed as applicable to any motor-vehicle incident with respect to which no part of the directly related events takes place on a public highway, road, or street.

§ 79.3 Investigation by Department.

In addition to considering applications filed with it, the Department of Transportation may, upon its own motion, initiate proceedings for award of medals under the Medals of Honor Act and cause investigations to be made. Sworn testimony of witnesses taken before an officer or employee of the Department designated by the Department for the purpose of taking such testimony shall become a part of the record in the case.

§ 79.4 Review of evidence; recommendations.

Applications for medals, together with all affidavits, testimony, and other evidence received in connection therewith, and the records developed in connection with investigations initiated by the Department of Transportation, shall be referred to a committee of three Department officials designated by the Secretary of Transportation. One of such officials shall be directly concerned with railroad safety, and another with motor-carrier safety. The committee shall carefully consider each application or record, and after thoroughly weighing the evidence shall prepare an abstract or brief covering the case and forward it, together with the committee's recommendation, to the Secretary of Transportation for his consideration.

§ 79.5 Award of medals.

Upon approval by the Secretary of Transportation of the committee's recommendation in any case, the Secretary shall make the award of the medal in the name and on behalf of the President.

§ 79.6 Adoption and revision of designs.

The Secretary of Transportation is authorized to adopt and revise the existing designs for the medal, rosette, and ribbon provided for by the Act.

§ 79.7 Time limits for filing.

No application for a medal shall be considered unless it is filed within two years from the date of the occurrence of the incident upon which it is based.

PART 81—RECOMMENDATIONS TO THE PRESIDENT UNDER SECTION 801 OF THE FEDERAL AVIATION ACT OF 1958

Sec.

81.1 Purpose.
81.3 Applicability.
81.5 Submission of comments.
81.7 Docket.

AUTHORITY: Sec. 9, 80 Stat. 944, 49 U.S.C. 1657; E.O. 11920 (June 10, 1976, 41 FR 23665).

SOURCE: 41 FR 32594, Aug. 4, 1976, unless otherwise noted.

§ 81.1 Purpose.

The purpose of this part is to set forth procedures for the receipt by the Department of Transportation of comments from persons not employed by the Federal government on possible recommendations by the Department to the President on decisions of the Civil Aeronautics Board submitted for the President's approval under section 801 of the Federal Aviation Act of 1958, which relates to overseas and international air transportation.

§ 81.3 Applicability.

(a) This part applies to all communications between persons not employed by the Federal government and officials or employees of the Department of Transportation on matters set forth in § 81.1 of this part.

(b) This part applies, with respect to any particular proceeding before the Civil Aeronautics Board, from the time that the Board's decision has been submitted to the President for consideration until the President has issued a final decision with respect to that proceeding.

§ 81.5 Submission of comments.

(a) All communications with Departmental officials or employees concerning a Presidential decision under section 801 of the Federal Aviation Act shall, whenever possible, be made in writing. Any such communication which is not made in writing shall be summarized by the official or employee of the Department who receives the communication.

(b) All such summaries and written communications except those relating to matters that are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy are placed in a public docket and available for public inspection and copying, and responsive comment.

§ 81.7 Docket.

(a) All comments submitted under this part shall reference OST Docket No. 45 and, as a subdocket number, the number of the Civil Aeronautics Board docket relating to the proceeding which is the subject of the comment.

(b) The original and four copies of such comments may be mailed to the Docket Clerk, Office of The General Counsel, TGC, Department of Transportation, Washington, D.C. 20590, or delivered to the Docket Clerk in the Office of the Assistant General Counsel for Operations and Legal Counsel, room 10100 Nassif building, 400 Seventh Street SW., Washington, D.C., 9 am to 5:30 pm local time, Monday through Friday except Federal holidays. Written comments submitted to Department officials other than the Docket Clerk and summaries of oral communications prepared in accordance with § 81.5(a) of this part shall be placed in the appropriate subdocket of OST Docket No. 45.

(c) All comments submitted under this part are available for public inspection and copying, and responsive comment, at the address and times specified in paragraph (b) of this section.

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

Subpart A—General

Sec.

89.1 Purpose.
89.3 Applicability.
89.5 Delegations of authority.
89.7 Exceptions to delegated authority.
89.9 Redelegation.
89.11 Standards for exercise of delegated authority.
89.13 Documentary evidence of compromise.
89.15 Regulations, reports, and supporting documentation.

Subpart B—Collection of Claims Section

89.21 Administrative collection.
89.23 Interest, late payment penalties, and collection charges.
89.25 Collection by administrative offset.
89.27 Referral for litigation.
89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.
89.31 Use of professional debt collection agencies.
89.33 [Reserved]

Subpart C—Referral of Debts to IRS for Tax Refund Offset

89.37 Applicability and scope.
89.39 Administrative charges.
89.41 Notice requirement before offset.
89.43 Review within the Department.
89.45 Department determination.
89.47 Stay of offset.

AUTHORITY: Pub. L. 89-508, July 19, 1966, 80 Stat. 308 (31 U.S.C. 3701, 3711; Pub. L. 97-365 secs 3, 10, 11, 13(b), Oct. 25, 1982, 96 Stat. 1749, 1754, 1755, 1757 (31 U.S.C. 3701-3720A Pub. L. 98-167, Nov. 29, 1983, 97 Stat. 1104 (31 U.S.C. 3718); Pub. L. 98-369, June 27, 1984, 98 Stat. 1153 (31 U.S.C. 3720A); Pub. L. 99-578, Oct. 28, 1986, 100 Stat. 3305 (31 U.S.C. 3718).

SOURCE: 53 FR 51238, Dec. 21, 1988, unless otherwise noted.

best copy available

pages tightly bound

Subpart A—General

§ 89.1 Purpose.

This part implements the Federal Claims Collection Act of 1966, 31 U.S.C. 3701-3720 A, as amended primarily by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749) and the Debt Collection Amendments of 1986 (Pub. L. 99-578, 100 Stat. 3305). It supplements the Federal Claims Collection Standards (FCCS), 4 CFR Parts 101-105, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). Pursuant to the Federal Claims Collection Act, as amended, and the FCCS, this part sets forth procedures by which the Department of Transportation (DOT) and its operating elements (see 49 CFR 1.3) through designated officials:

(a) Collect claims owed to the United States arising from activities under its jurisdiction;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and

(d) Refer unpaid claims for litigation.

§ 89.3 Applicability.

(a) The part applies to collection of all claims due the United States under the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collection Amendments of 1986 (Pub. L. 99-578), arising from activities under the jurisdiction of DOT including amounts due the United States from fees, overpayments, fines, civil penalties, loans, damages, interest, and other sources.

(b) This part does not apply to collection, settlement or compromise of debts owed the United States pursuant to authority other than Title 31, Chapter 37, Subchapter II: for example, application of this part to the enforcement of contracts under 46 U.S.C. 1117, delegated to the DOT Maritime Administration, is not required.

(c) Section 89.23 (interest, late payment penalties, and collection charges) and § 89.25 (collection by administrative offset) of this part do not apply to debts which other United States government agencies or state governments or units of general local government owe the Department (see 31 U.S.C. 3701(c)); however, other statutory or common law may provide legal authority. Neither does the proposed rule apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514.

(d) Claims arising out of contracts that contain specific provisions relating to claims are governed by those specific provisions to the extent that those provisions comply with existing law and with 4 CFR Chapter II.

(e) As used in this part, the terms debt and claims are interchangeable and have the meaning defined in 4 CFR 101.2(a). A debtor's liability arising out of a particular incident or adjudication exclusive of interest, administrative costs, and late payment penalties, is a single claim.

(f) Except as provided in paragraphs (b), (c) and (d) of this section the provisions of this part shall apply to the collection of all debts and claims owed to any DOT operating element. A claim arising from the assessment of civil penalty or fine is not subject to the procedures of this subpart until the claim has been reduced to a liquidated debt by a signed settlement agreement, a court order or judgment, or a final administrative determination.

§ 89.5 Delegations of authority.

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding $20,000 and to suspend and terminate action to collect such claims are delegated to:

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The heads of other DOT operating elements with respect to claims arising out of the activities of, or referred to, their organizations.

§ 89.7 Exceptions to delegated authority.

The authority delegated under § 89.5 does not apply to any claim:

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based on tax statutes; or

(c) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

§ 89.9 Redelegation.

Each officer to whom authority is delegated under § 89.5 may redelegate and authorize successive redelegations of the authority within the organization under his or her jurisdiction.

§ 89.11 Standards for exercise of delegated authority.

The authority delegated under § 89.5 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR Chapter II, as those standards may be amended.

§ 89.13 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.15 Regulations, reports, and supporting documentation.

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

Subpart B—Collection of Claims

§ 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date [see § 89.23 for details regarding interest, collection charges, and late payment penalty charges];

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see § 89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 4 CFR Parts 101 through 105, pursuant to 31 U.S.C. 3701-3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701-3720A.

(d) DOT may collect by administrative offset, (see § 89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR Part 7, the debtor may inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the copying and inspection of the records shall be borne by the debtor. (Payment of cost is governed by 49 CFR Part 7, Subpart I.) The debtor shall give reasonable notice in advance to the agency of the date on which it intends to inspect and copy the records involved;

(f)(1) Except for debts established by settlement agreement, court order or judgment, or final administrative decision, the debtor may request review of the validity or amount of a claim. To do so, the debtor shall make a request in writing for review of the claim prior to it becoming delinquent. (*See* 4 CFR 101.2 for definition of when a debt is considered delinquent.) The debtor's written response shall state the basis for the dispute, and provide all factual information, documents, citation to authority, argument and any other matters to be considered. If only part of the claim is disputed, the undisputed portion shall be paid by the delinquency date stated in the initial demand. During the period that the claim is being reviewed, the amount of the debt is owed, but the accrual of interest and accrual of time to delinquency may be suspended on the disputed portion of the debt.

(2) Review of claims shall be based upon the written record unless an oral hearing is required by 4 CFR 102.3(c). Upon completion of review, within 30 days whenever feasible, the Department shall advise the debtor whether the debt has been found to be valid in any amount, or that collection will be terminated. If the claim is found to be valid in any amount, the accrual of interest and time to delinquency shall commence 15 days after mailing of the notification of the review results. The notification of the review may also include notice of a specific collection action to be undertaken if payment is not received.

(g) The debtor may offer to make a written agreement to pay the amount of the claim. The acceptance of such an agreement is discretionary with DOT. If the debtor requests an installment payment arrangement because a lump sum payment would create a financial hardship, DOT may agree to a written installment payment schedule with the debtor (see 4 CFR 102.11(a)). The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement and includes a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest shall be provided in the note (see § 89.23). The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation, which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Evidence of these facts shall be maintained in DOT's file on the debtor in accordance with the practice of the DOT operating element.

§ 89.23 Interest, late payment penalties, and collection charges.

(a) DOT shall charge interest on an outstanding debt at the Treasury Current Value of Funds Rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and 4 CFR 102.13(c), unless DOT determines that a higher rate is necessary to protect the interests of the United States. DOT shall charge a late payment penalty at a rate of six percent a year on any portion of a debt that is more than 90 days past due. DOT shall also assess administrative charges to cover additional cost incurred in processing and handling the debt beyond the payment due date. The imposition of interest, collection charges, and late payment penalty charges shall be made in accordance with 31 U.S.C. 3717, 4 CFR 102.13 (see § 89.3(c) regarding payment of such charges by Federal, state and local government agencies).

(b) Interest on debt shall begin to accrue on the date on which the debtor is mailed or delivered notice of the debt and the interest requirements or, in the case of advance billings, on the calendar day following the specified due date of the debt, provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest assessed shall be the rate in effect on the date from which interest begins to accrue, and will remain fixed for the duration of the indebtedness. The rate of interest assessed will generally be the Treasury Current Value of Funds Rate.

(c) The Department shall waive interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) Collection charges on debt shall be computed to cover the cost of processing and handling the delinquent debt. It shall be either the actual cost to process the particular delinquent debt to which it is applied, or operating elements may set the amount of such monthly charge by cost analysis establishing the average of actual additional costs incurred by the operating element in processing similar debts. Collection charges may also include the expense of obtaining credit reports and of using a professional debt collection contractor.

(e) DOT may waive interest, collection charges, or late payment penalty charges if it finds that:

(1) The debtor would be eligible for compromise under standards set forth in 4 CFR 103.2 with regard to the amount of the debt;

(2) Collection of interest, administrative charges, or penalties will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interests of the United States, including the situation in which an offset or installment payment agreement is in effect.

§ 89.25 Collection by administrative offset.

(a) Whenever feasible, after a debtor fails to pay a claim, request a review of a claim, or make an arrangement for payment following a demand made in accordance with § 89.21, DOT shall collect claims under this part by means of administrative offset against obligations of the United States to the debtor pursuant to 31 U.S.C. 3716 and 4 CFR 102.3. Salary offset against present or former employees of the

United States is not governed by this Part (see 49 CFR Part 92).

(b) The Department shall notify the debtor in writing in conformance with 31 U.S.C. 3716 and the FCCS of its intent to collect the debt by offset, unless the debtor pays the debt in full, including all interest, administrative charges, and penalties, or executes an agreement to pay the debt by installment at terms acceptable to DOT.

(c) In making collection by administrative offset under 31 U.S.C. 3716, DOT must do so in accordance with the requirements set forth in § 89.21(b)(1-6). (See also procedures for recovery of debts to the United States by salary offset, 49 CFR Part 92.)

§ 89.27 Referral for litigation.

Claims that are not settled or for which collection action is not compromised, suspended or terminated under 4 CFR Parts 103 and 104 or collected by collection agencies shall be referred to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR Part 105.

§ 89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.

(a) Data on all delinquent commercial and consumer debts may be reported to commercial credit bureaus and consumer reporting agencies (see 31 U.S.C. 3701(a)(3)). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be by separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection Standards.

(b) The information that may be disclosed is the debtor's name, address, social security number or taxpayer identification number, and any other information to establish the identify and location of the individual, the amount of the claim, status and history of the claim, and the program under which the claim arose.

§ 89.31 Use of professional debt collection agencies.

Debts over 90 days delinquent (see § 89.21(b)(4)) may be turned over to professional debt collection agencies except for those debts owed by State and local governments, other Federal agencies, current employees, and other debts prohibited by statute from being turned over to commercial collection agencies.

§ 89.33 [Reserved]

Subpart C—Referral of Debts to IRS for Tax Refund Offset

SOURCE: 54 FR 28681, July 7, 1989, unless otherwise noted.

§ 89.37 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this subpart, a past-due legally enforceable debt referable to the IRS is:

(1) A debt which:

(i) Is owed to the United States;

(ii) Is at least $25.00;

(iii) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(iv) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(v) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(vi) Has been disclosed by the Department to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00; and

(2) A debt for which the Department has:

(i) Notified or has made reasonable attempt to notify the taxpayer that the debt is past-due and, that the debt, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax;

(ii) Given the debtor at least 60 days from the date of notification to present information that all or part of the debt is not past-due or legally enforceable, has considered information presented by such debtor, and has determined that an amount of debt is past-due and legally enforceable;

§ 89.39 Administrative charges.

In accordance with 4 CFR 102.13, all administrative charges incurred in connection with the referral of the debt to the IRS shall be added to the debt and thus increase the amount of the offset.

§ 89.41 Notice requirement before offset.

A request for offset from an IRS tax refund will be made only after the Department has made a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Department's notice of intention to collect by IRS tax refund offset (Notice of Intent) includes:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the Department's Notice of Intent, the Department will refer the debt to the IRS for offset against any amount due the debtor as a tax refund;

(c) That the debtor has a right to present information that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and telephone number for any questions.

§ 89.43 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent may present, for 60 days from the date of the Notice of Intent, information that all or part of the debt is not past-due or legally enforceable. (However, this does not extend the regulatory period for submitting written statements or for requesting an administrative hearing on the merits of an alleged violation, nor does it extend the period to appeal an assessed civil penalty.) To comply with this procedure, the debtor must:

(1) Send a written request for a review of the information to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60 day period.

(b) *Submission of information.* The debtor may submit information showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the information within the remainder of the 60 day period will be interpreted as there is no additional information for consideration.

(c) *Review of the information.* The Department considers all available information related to the issue of whether the debt is past-due and the issue of whether the debt is legally enforceable. After a decision has been reached, the Department notifies the debtor whether the Department has sustained amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 89.45 Department determination.

(a) Following review of the information, the Department notifies the debtor with a written decision that includes the supporting rationale.

(b) If the Department either sustains or amends its determination, it shall notify the debtor that the debt is being referred to the IRS for offset against the debtor's Federal income tax refund. If the Department determines that there is no legally enforceable debt or that full payment has been made, the case will be closed.

§ 89.47 Stay of offset.

If the debtor timely notifies the Department that he or she is complying with the procedures in § 89.43(a) of this subpart and timely submits additional information in accordance with § 89.43(b) of this subpart, the debt will not be referred to the IRS while the matter is under review by the Department. Referral will not be made until the issuance of a written decision, in accordance with § 89.45 of this subpart, which sustains or amends the Department's original determination.

PART 90—AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.
90.1 Policy and scope.
90.3 Authority.
APPENDIX A—OMB CIRCULAR A-128, AUDITS OF STATE AND LOCAL GOVERNMENTS

AUTHORITY: 31 U.S.C. 7501 and 49 U.S.C. 322.

§ 90.1 Policy and scope.

The regulation in this part implements the Single Audit Act of 1984 (Pub. L. 98-502), 31 U.S.C. 7501. All State and local government organizations that receive Federal assistance funds from the Department of Transportation, including funds received indirectly through other units of State and local governments, are required to meet the audit requirements of Appendix A (Office of Management and Budget Circular A-128, Audits of State and Local Governments). Specific guidance for individual assistance programs in the Department are contained in program guidance issued by the operating administrations in the Department that award Federal assistance funds.

[50 FR 33340, Aug. 19, 1985, as amended at Amdt. 1, 50 FR 49931, Dec. 6, 1985]

§ 90.3 Authority.

This part is authorized by 49 U.S.C. 322, which allows the Secretary to make such rules and regulations as may be necessary to carry out the Secretary's functions, powers, and duties.

[50 FR 33340, Aug. 19, 1985, as amended at Amdt. 1, 50 FR 49931, Dec. 6, 1985]

APPENDIX A—OMB CIRCULAR A-128, AUDITS OF STATE AND LOCAL GOVERNMENTS

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Circular No. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in

accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification

of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

- Withholding a percentage of assistance payments until the audit is completed satisfactorily,
- Withholding or disallowing overhead costs, and
- Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

ATTACHMENT—CIRCULAR A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[50 FR 33340, Aug. 19, 1985]

PART 91—INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES

Sec.
91.1 Purpose.
91.3 Investigations.
91.5 Findings and recommendations.
91.7 Determination of compensatory charges.
91.9 Distribution of compensatory funds.
91.11 Standards.
91.13 Refunds.

Authority: Secs. 2-3, 88 Stat. 2103, 49 U.S.C. 1159a and 1159b, Pub. L. 93-623.

Source: 41 FR 54770, Dec. 15, 1976, unless otherwise noted.

§ 91.1 Purpose.

The purpose of this part is to prescribe the Secretary's role in executing his responsibilities under sections 2 and 3 of the International Air Transportation Fair Competitive Practices Act of 1974 to the end that U.S. flag air carriers operating in foreign air transportation are protected from all forms of discrimination or unfair competitive practices and are compensated for excessive or otherwise discriminatory charges levied by foreign governments or other foreign entities for the use of airport or airway property.

§ 91.3 Investigations.

The Assistant Secretary for Policy, Plans and International Affairs (Assistant Secretary), in coordination with the General Counsel and the Federal Aviation Administrator (Administrator), on complaint of any U.S. flag air carrier or on their own initiative, shall investigate: (a) Instances of alleged excessive or otherwise discriminatory user charges or (b) discriminatory or unfair competitive practices to which U.S. flag air carriers are subjected by a foreign government or other foreign entity. Excessive or otherwise discriminatory charges include, but are not limited to, unreasonable landing fees, unreasonable monopoly ground handling fees and unreasonable air navigation charges. Discriminatory or unfair competitive practices include, but are not limited to, unreasonably differentiated fuel allocations, cargo, charter or currency restrictions and inferior monopoly ground handling services.

§ 91.5 Findings and recommendations.

(a) Upon finding that a foreign government or entity imposes excessive or otherwise discriminatory charges against U.S. flag air carriers or causes such carriers to be subjected to discriminatory or unfair competitive practices, the Assistant Secretary, in coordination with the General Counsel and the Administrator, shall determine the extent of the discrimination or unfair competitive practices.

(b) Where the matter involves excessive or otherwise discriminatory charges, the Assistant Secretary shall prepare a report and recommend that the Secretary promptly submit a report of the case to the Secretary of State and the Civil Aeronautics Board in accordance with Section 11 of the International Aviation Facilities Act, 49 U.S.C. 1159a.

(c) Where the matter involves discrimination or unfair competitive practices other than user charges, the Assistant Secretary shall prepare a report and recommend that the Secretary take such other action within the jurisdiction of the Department as is appropriate under the circumstances in accordance with 49 U.S.C. 1159b.

(d) If the Secretary determines, after review of the report and recommendations made under paragraph (b) of this section, that unreasonably excessive or otherwise discriminatory charges exist, the Secretary will submit a report on the matter to the Secretary of State and the Chairman of the Civil Aeronautics Board in accordance with 49 U.S.C. 1159a.

(e) If the Secretary determines, after review of the report and recommendations made under paragraph (c) of this section, that discriminatory or unfair competitive practices exist, the Secretary will commence all appropriate action within his jurisdiction in accordance with 49 U.S.C. 1159b.

§ 91.7 Determination of compensatory charges.

(a) Upon indication by the Secretary of State that the excessive or otherwise discriminatory user charges have not been reduced or eliminated, the Secretary will direct the Assistant Secretary to compute the appropriate amount of compensatory charges.

(b) Upon approving the amount of compensatory charges computed under paragraph (a) of this section, the Secretary will notify the Secretary of State and the Secretary of the Treasury of his determination.

§ 91.9 Distribution of compensatory funds.

(a) On or after January 1 and July 1 of each year, each U.S. flag air carrier which has been subjected to excessive or otherwise discriminatory charges for which compensatory charges have been collected shall, upon compliance with paragraph (c) of this section, be entitled to pro rata reimbursement for excessive or otherwise discriminatory charges incurred to date, not to exceed the amount of such charges actually paid by that carrier.

(b) The Secretary will publish in the FEDERAL REGISTER, at least 30 days before a U.S. flag air carrier becomes entitled to reimbursement, a notice setting forth the procedures to be followed in making claims for reimbursement. This notice will specify the form in which application shall be made and the specific items of proof, if any, to be submitted.

(c) On or after January 1 and July 1 of each year, each U.S. flag carrier claiming a right to reimbursement shall apply for such reimbursement in accordance with the FEDERAL REGISTER notice referred to in paragraph (b) of this section.

(d) The Assistant Secretary shall, on the basis of the application and such other data as may be available, compute the amount to which such carrier is entitled.

(e) Subject to the provisions of § 91.13(b), upon approving the computation made by the Assistant Secretary, the Secretary shall issue such certificate as will entitle each such carrier to payment from the account maintained by the Secretary of the Treasury for this purpose.

§ 91.11 Standards.

(a) To minimize the burden of implementing this part on the United States, on U.S. flag air carriers and on foreign air carriers, estimates and periodic adjustments will be used to determine the amount of discrimination and compensatory charges therefor.

(b) For the purpose of determining the amount of excessive or otherwise discriminatory charges imposed upon U.S. flag air carriers by an entity:

(1) A service or use of airport or airway property includes, but is not limited to, fueling, food service, ticketing, baggage handling, runways, ramps, parking areas, navigational aids, communications facilities or any other service necessary and incidental to the conduct of a flight.

(2) An excessive or otherwise discriminatory charge includes, but is not limited to, a charge substantially above the cost of providing a service or any charge for a service that is substantially inferior to that which the U.S. flag air carrier could have provided for itself, at the same cost, by contract or otherwise (*see also* § 91.3).

(c) In determining the amount of compensatory charge:

(1) The total amount of excessive or otherwise discriminatory charges levied against U.S. flag air carriers will be estimated in dollars.

(2) The total volume of operations to the United States by air carriers of the nation concerned will be estimated for the succeeding six-month period.

(3) The total amount of excessive or otherwise discriminatory charges in paragraph (c)(1) of this section will be divided by the total volume of operations in paragraph (c)(2) of this section, and

(4) The quotient thus computed (which may be adjusted to reflect the type of aircraft) will constitute the compensatory charge to be collected as a condition to acceptance of the general declaration at the time of landing or takeoff of such air carriers of the nation concerned.

§ 91.13 Refunds.

(a) Where, in his discretion, the Secretary finds that good cause has been shown, the Secretary may authorize a refund of collected compensatory charges. For purposes of this section, good cause includes, but is not limited to, an error of fact, a miscalculation, or a determination that an original conclusion of entitlement was insufficient, invalid, erroneous or invalidated by subsequent events.

(b) Notwithstanding the provisions of § 91.9(e) the Secretary may suspend for a reasonable time the issuance of a certificate of entitlement upon a showing by a payor of compensatory charges that there is a substantial likelihood that the payor will make a showing of good cause under § 91.13(a).

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the issuance of a certificate of entitlement under § 91.9(e) or the distribution to U.S. flag air carriers of funds collected under this part shall be with prejudice to any claim for refund under this section.

PART 92—RECOVERING DEBTS TO THE UNITED STATES BY SALARY OFFSET

Sec.
92.1 Purpose.
92.3 Scope.
92.5 Definitions.
92.7 Notice, hearing, written response and decision.
92.9 Exceptions to notice, hearing, written response, and final decision.
92.11 Demand for payment.
92.13 Request for hearing.
92.15 Request for hearing after time expires.
92.17 Form of hearings and written decisions.
92.19 Obtaining the services of a hearing official.
92.21 Deduction from pay.
92.23 Collection.
92.25 Source of deductions.
92.27 Duration of deductions.
92.29 Limitation on amount of deductions.
92.31 Liquidation from final payment.
92.33 Recovery from other payments due a separated employee.
92.35 Interest, penalties and administrative costs.
92.37 Non-waiver of rights by payment.
92.39 Refunds.
92.41 Requesting recovery when the Department is not the paying agency.
92.43 Requests for recovery when the Department is the paying agency.
92.45 Other debt collections.

AUTHORITY: 5 U.S.C. 5514, as amended; 5 CFR Part 550, Subpart K; 4 CFR Parts 101-105.

SOURCE: 53 FR 4171, Feb. 12, 1988, unless otherwise noted.

§ 92.1 Purpose.

This part implements 5 U.S.C. 5514 (Installment Deduction for Indebtedness to the United States), as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749, 1751). It supplements 5 CFR Part 550, Subpart K, and the Federal Claims Collections Standards (4 CFR Parts 101-105) issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2). It sets forth the procedures by which the Department of Transportation (DOT), including its operating elements (see 49 CFR 1.3):

(a) Collects debts owed to the United States by current and former DOT employees;

(b) Determines and collects interest and other charges on that indebtedness.

(c) Offsets the salary of DOT employees to collect debts owed to the United States by those employees; and,

(d) Obtains salary offset to collect debts owed to the United States by employees of other agencies under programs administered by DOT.

§ 92.3 Scope.

The provisions of this Part are applicable to the indebtedness of a current or former employee of DOT incurred under any program administered by

DOT. The provisions of this Part do not apply to the collection of indebtedness by authority other than 5 U.S.C. 5514.

§ 92.5 Definitions.

As used in this part:

(a) "Agency" means an Executive Agency as defined by Section 105 of Title 5, United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, a Military Department as defined by section 102 of Title 5, United States Code, an agency or court in the judicial branch, an agency of the legislative branch, and any other independent establishments which are entities of the Federal Government. In DOT each operating element will act for the agency in collecting debts under this rule.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include, but are not necessarily limited to, erroneous payments made to employees, overpayments of benefits, salary or other allowances, loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources. This term does not include a Government claim arising under the Internal Revenue Code of 1954 (26 U.S.C. 1-9602) as amended; the Social Security Act (42 U.S.C. 301-1397f); the tariff laws of the United States; or any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., emergency and travel advances under 5 U.S.C. 5522, 5705 or 5724 and employee training expenses under 5 U.S.C. 4108).

(d) "Debt Claim Form" means the form used by DOT when requesting that an agency, other than DOT, assist in the recovery of funds.

(e) "Delinquent debt" means a debt which has not been paid by the date specified in the agency's initial written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.

(f) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. (See 5 CFR 581.105 (b) through (f) for items required by law to be withheld, and therefore excluded from disposable pay for the purposes of this regulation).

(g) "DOT operating element" (see 49 CFR 1.3) means a DOT Operating Administration including—

(1) U.S. Coast Guard.

(2) Federal Aviation Administration.

(3) Federal Highway Administration.

(4) Federal Railroad Administration.

(5) National Highway Traffic Safety Administration.

(6) Urban Mass Transportation Administration.

(7) St. Lawrence Seaway Development Corporation.

(8) Maritime Administration.

(9) Research and Special Program Administration.

(10) The Office of the Secretary.

(h) "Employee" means a current or former employee of a Federal agency, including a member of the Armed Forces (including retired members) or a Reserve of the Armed Forces (Reserves). However, employees paid from non-appropriated funds are not included.

(i) "FCCS" means the Federal Claims Collection Standards, 4 CFR Ch. II, jointly published by the Department of Justice and the General Accounting Office.

(j) "Hearing" means an informal conference before a hearing official in which the employee and the DOT operating element are given an opportunity to present evidence, witnesses, and argument. The hearing official shall be either an administrative law judge or an individual not under the supervision or control of the Department.

(k) "Paying agency" means the agency authorizing the payment of the employee's current pay.

(l) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of a present or former employee with or without his or her consent. It includes a single offset from the final salary of an employee whose employment ends.

(m) "Waiver" means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 92.7 Notice, hearing, written response and decision.

(a) Except as provided in § 92.9 of this part, each employee from whom the department proposes to offset a debt against the Federal pay of an employee who is indebted to the United States under a program administrated by DOT under these regulations is entitled to receive a minimum of 30 days written notice as described in § 92.11 of this part (see also § 92.21(a)).

(b) Each employee owing a debt to the United States which will be collected by salary offset is entitled to petition for a hearing before collection starts. This petition shall be filed directly with the accounting or finance office of the DOT creditor operating element which shall make appropriate hearing arrangements consistent with law and regulations. The DOT creditor operating element shall provide an explanation of the rights of the employee. If a hearing is provided, the following issues shall be heard:

(1) The determination of the DOT creditor operating element concerning the existence and amount of the debt; and

(2) The terms of the repayment schedule, if not previously established by written agreement between the employee and the DOT creditor operating element. (See § 92.21(c) regarding copy of written decision by hearing officer describing method and amount of salary offset).

§ 92.9 Exceptions to notice, hearing, written response, and final decision.

(a) *Exceptions.* The procedural requirements of 5 U.S.C. 5514 do not apply to recovery by way of retroactive deductions for administrative adjustments associated with the Federal benefits program. In such cases the content of the notification to employees is stated in § 92.9(b).

(b) *Simplified procedures to be followed.* In the event that a retroactive deduction from pay or allowances is required to recover an insufficiency of deductions arising through normal processing delays, and those insufficient deductions did not occur in more than four pay periods, rather than following the specific procedures required by 5 U.S.C. 5514(a)(2), and set forth in § 92.11 through § 92.17 of this part, the DOT creditor operating element shall issue in advance of the collection a simplified notice to the employee that:

(1) Because of the employee's election for changes in voluntary payroll deduction, corresponding deductions shall be imposed on the employee's salary to cover the period between the effective date of the election and the first regular withholding. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future pay will be reduced to permit the DOT creditor operating element to recover any excess pay or allowances received by the employee. The employee may dispute the amount of the retroactive collection by notifying his or her accounting or finance officer.

(c) *Limitation on exceptions.* The exceptions described in paragraph (a) of this section shall not include a recovery required to be made for any reason other than routine processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively recovered is less than four pay periods. If normal processing delays exceed four pay periods, then the full procedures prescribed under 5 U.S.C.

5514 and §§ 92.11 through 92.17 of this part will be extended to the employee.

[53 FR 4171, Feb. 12, 1988, as amended at 53 FR 51279, Dec. 21, 1988]

§ 92.11 Demand for payment.

(a) The DOT creditor operating element shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal (see also § 92.21(a)). Other information may also indicate that additional written demands are unnecessary.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the indebtedness;

(2) The amount of the claim;

(3) The date by which payment is to be made:

(4) The debtor's liability for interest, penalties and administrative charges in accordance with 31 U.S.C. 3717 and § 92.35 of this part, if payment is not received within 30 days of the due date (see § 92.35 for details regarding interest, penalties and administrative costs);

(5) The intent of the agency to collect by salary offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor:

(i) Has not made payment by the payment due date;

(ii) Has not requested a review of the claim within the agency as set out in paragraph (b)(8) of this section; or

(iii) Has not made an arrangement for payment by the payment due date:

(6) The possible submission of claims to a collection agency or referral to the General Accounting Office or the Department of Justice for litigation in accordance with the procedures in 4 CFR Part 105.

(7) The right of the debtor to inspect and copy the records of the agency related to the claim. Any reasonable costs associated with the inspection and copying of these records shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which he or she intends to inspect and copy the records involved.

(8) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or in part, the debtor shall respond to the demand by making a request in writing for a review of the claim within the agency by the payment due date stated in the demand. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion shall be paid by the due date. The DOT creditor operating element shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the DOT operating element either sustains or amends its determination, it shall notify the debtor of its intent to collect by salary offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(9) The right of the debtor to offer to make a written agreement to repay the amount of the claim (see § 92.23). The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the DOT creditor operating element will analyze the debtor's financial condition. Depending on its evaluation of the financial strength of the debtor, the DOT operating element may agree to a written installment repayment schedule with the debtor. The debtor shall execute a confession of judgment note which specifies all of the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest, penalties and administrative charges shall be provided in the note (see § 92.35). The debtor shall be provided with a written explanation of the consequences of signing a confession of judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation

which shall recite that the statement was read and understood before execution of the note and that the note is being signed knowingly and voluntarily. Some form of evidence of these facts shall be maintained in the agency's file on the debtor.

(10) The right to an oral hearing or a hearing based on written submissions conducted by an administrative law judge or by a hearing official not under the control of the head of the Department in accordance with § 92.13 of this part.

(11) The consequences of any knowingly false statements, representations, or evidence provided by the employee, which may include:

(i) Disciplinary procedures under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002, or any other applicable statute; or,

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729, *et seq.*, or any other applicable statute.

(12) Proceedings under any other statutory authority for the collection of claims of the DOT operating element.

(13) The fact that amounts paid on or deducted from the debt which are later waived or found not owed to the United States will be promptly refunded to the employee unless there are applicable contractual or statutory provisions to the contrary.

(14) The name, address, and telephone number of the accounting or finance officer who may be contacted if the employee wishes to review the records or to obtain information.

§ 92.13 Request for hearing.

(a) The employee shall be advised in the notification that a hearing may be requested by filing a written petition within 15 calendar days of receipt of the notification, addressed to the chief of the paying agency's accounting or finance office.

(b) The petition shall state the grounds upon which the employee disputes the proposed collection of the alleged debt. The petition shall identify and explain with reasonable specificity the facts, evidence which, and witnesses who the employee believes support his or her position.

(c) The timely filing of a petition for hearing shall stay any further collection proceedings. A decision by the administrative law judge or other hearing official (see § 92.5(j)) will be issued at the earliest practical date, but no later than 60 days after the filing of a petition for hearing, unless a delay is granted at the request of the employee.

§ 92.15 Request for hearing after time expires.

The Department may accept late requests for a hearing if the employee can show that delay in requesting a hearing beyond the period provided in the notice described in § 92.11 of this part was caused by circumstances beyond his or her control or because of failure to receive notice of the time limit (unless he or she was otherwise aware of it) or because of new information.

§ 92.17 Form of hearings and written decisions.

(a) Hearings shall consist of informal conferences before an administrative law judge or other hearing official (see § 92.5(j)) in which the employee and the DOT creditor operating element are given full opportunity to present evidence, witnesses, and argument. The DOT operating element will maintain a summary record of a hearing provided under these procedures.

(b) Written decisions provided after a request for hearing shall, at a minimum, summarize the evidence alleged to substantiate the nature and origin of the alleged debt; the administrative law judge's or other hearing official's analysis, findings and conclusions; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

(c) A copy of the administrative law judge's or other hearing official's final decision shall be provided to the employee as well as the chief of the office authorized to collect debts by deduction from salary.

(d) The decision of the administrative law judge or other hearing official shall be final and binding on the parties.

§ 92.19 Obtaining the services of a hearing official.

(a) Where a DOT operating element is the creditor agency, the chief of the appropriate accounting or finance office shall schedule a hearing before an administrative law judge or other hearing official.

(b) If another (non-DOT) agency is the creditor agency, then it is the responsibility of that agency to arrange for a hearing if one is requested.

(c) Agents for the paying agency are designated in Appendix A to 5 CFR Part 581. (This appendix lists the agents designated to accept legal process for the executive branch, the U.S. Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.

§ 92.21 Deduction from pay.

(a) After other, less severe collection actions have failed, the DOT operating element (see § 92.5(g)) may implement steps to obtain collection by salary offset. The method and the amount of the salary offset shall be the method and amount stated in the creditor agency's demand letter (see § 92.11) or notice (see § 92.7), or, if applicable, in the decision of an administrative law judge or other hearing official after an employee-requested hearing on the matter. If a DOT operating element is the creditor, the procedures stated in § 92.11 shall be followed.

(b) Before a collection by salary offset may be made, the chief of the accounting or finance office of the paying DOT operating element shall be furnished with certified documentation by the creditor agency indicating that the creditor agency has sent the employee a demand letter pursuant to § 92.11 of this part stating as a minimum:

(1) The nature and amount of the indebtedness and the intention of the agency to initiate, at the expiration of thirty days, a proceeding to collect the debt by salary offset; and an explanation of the rights of the employee under this subsection;

(2) That the employee has the opportunity to inspect and copy Government records relating to the debt;

(3) That the employee has an opportunity to enter into a written agreement with the agency to establish a schedule for the repayment of the debt;

(4) That the employee has an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement as described in paragraph (b)(3) of this section concerning the terms of the repayment schedule; and

(5) That the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM (see 5 CFR 550.1108(a)).

(c) Where a hearing has been held, a copy of the decision of the administrative law judge or other hearing official must be furnished to the chief of the accounting or finance office of the paying DOT operating element before collection of the indebtedness by salary offset may be initiated. The method and amount of the offset will be as stated in the decision.

§ 92.23 Collection.

(a) A debt shall be collected in a lump sum or by installment deductions at officially established pay intervals from an employee's current pay account, unless the employee and the DOT operating element agree to alternative arrangements for payment (see § 92.11(b)(9) describing such voluntary repayment arrangements). The alternative arrangement shall be in writing, signed by both the employee and the chief of the appropriate accounting or finance office, and shall be documented in the DOT operating element's files.

(b) Under 31 U.S.C. 3716 and 4 CFR 102.3(b)(3), agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt accrued, unless facts material to the Government's rights to collect the debt were not known by the DOT operating element's official or officials charged with the responsibility to discover and collect the debt.

§ 92.25 Source of deductions.

Except as provided in § 92.31 and § 92.33 of this part (with respect to separated employees), the paying DOT operating element will make deductions only from disposable pay (see § 92.5(f).

§ 92.27 Duration of deductions.

Debts shall be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay payable in one pay period, collection will be made in installments. Such installment deductions will be made over a period not greater than the anticipated period of employment or active duty, as the case may be, except as provided in §§ 92.29, 92.31, and 92.33 of this part.

§ 92.29 Limitation on amount of deductions.

The size and frequency of installment deductions shall bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

§ 92.31 Liquidation from final payment.

If the employee retires, resigns his or her employment, is terminated, or the employment or period of active duty ends before collection of the debt is completed, there shall be an offset from subsequent payments of any nature (e.g., final salary, lump sum leave, etc.) due the employee from the DOT operating element on the date of separation to the extent necessary to liquidate the debt.

§ 92.33 Recovery from other payments due a separated employee.

If the debt cannot be liquidated by offset from any final payment due the employee as of the date of separation, the DOT operating element shall liquidate the debt by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the former employee from the United States, where appropriate (see § 92.41(b)(2)(ii)).

§ 92.35 Interest, penalties and administrative costs.

(a) Where a DOT creditor operating element (see § 92.5(g)) is the creditor, it shall charge interest on an outstanding debt at the rate published by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The DOT creditor operating element shall charge a penalty of six percent a year, in addition to interest, on any portion of a debt that is more than 90 days past due. It shall assess administrative charges to cover additional costs incurred in processing and handling the debt beyond the payment due date. The imposition of interest, penalties and administrative charges is made in accordance with 31 U.S.C. 3717 and 4 CFR 102.13.

(b) Interest on debt shall begin to accrue on the date on which the debtor is first sent or delivered notice of the debt and of the interest requirements or, in the case of advance billings, on the calendar date following the specified due date of the debt provided the advance billing gives notice of the interest requirements for late payment. Interest on the debt shall continue to accrue until payment is received. Interest shall be calculated only on the principal of the debt (simple interest). The rate of interest charged shall be the rate in effect on the date from which interest begins to accrue, and shall remain fixed for the duration of the indebtedness.

(c) A DOT creditor operating element shall waive the monthly interest on debt that is paid within 30 calendar days after the date on which interest began to accrue.

(d) A DOT creditor operating element may waive interest, penalties and/or administrative charges if it finds that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, penalties or administrative charges will jeopardize collection of the principal of the debt; or

(3) It is otherwise in the best interests of the United States, including the situation where an offset or installment payment agreement is in effect.

§ 92.37 Non-waiver of rights by payment.

An employee's payment or agreement to pay, whether voluntary or involuntary, of all or any portion of an alleged debt being collected pursuant to these procedures shall not be construed as a waiver of any rights which the employee may have under this Part to the extent of such payment or agreement.

§ 92.39 Refunds.

(a) Amounts paid or deducted from the account of a current or former employee of the United States Government, pursuant to this part, for a debt which is found not owing to the United States shall be promptly refunded to the employee.

(b) Amounts which are waived shall, after proper application, be promptly returned after approval of the application.

§ 92.41 Requesting recovery when the Department is not the paying agency.

(a) *Format of the request for recovery.* (1) Where the DOT operating element is the creditor agency and another agency is the paying agency, the chief of the accounting of finance office of the appropriate DOT operating element (see § 92.5(g)) shall complete and certify the "Debt Claim Form" (see Attachment 1), and attach a copy of the demand letter sent to the employee pursuant to § 92.11 with a statement of the employee's response thereto, or, if a hearing was held pursuant to § 92.13, attach a copy of the decision of the administrative law judge or other hearing official. The DOT creditor operating element shall certify that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection is to be made in voluntary or involuntary installments (see Attachment 1), the DOT creditor operating element shall also advise the paying agency of the amount of the installments and, if a date for the beginning of payments other than the next officially established pay period is required, the date of the first installment.

(3) Unless the employee has voluntarily agreed to the salary offset in writing or, in the absence of such agreement, has signed a statement acknowledging receipt of the procedures required by 5 U.S.C. 5514(a)(2) and the writing or statement is attached to the debt claim form, the DOT creditor operating element shall also indicate the action(s) taken under 5 U.S.C. 5514 and give the date(s) the action(s) were taken.

(b) *Submitting the request for recovery*—(1) *Current employees.* The DOT creditor operating element shall submit the "Debt Claim Form" (Attachment 1) to the employee's paying agency.

(2) *Employees who are separating or have separated* —(i) *Employees who are in the processs of separating.* If the employee is in the process of separating, the DOT creditor operating element shall submit its debt claim (Attachment 1) to the employee's paying agency for collection as provided in § 92.31 of this part. The paying agency is required to certify the total amount of its collection made or to be made prior to separation and notify the DOT creditor operating element and the employee as provided in § 92.41 (b)(2)(iii). If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it shall advise the DOT operating element and send a copy of the debt claim and certifica-

tion to the agency responsible for making such payments as notice that a debt is outstanding.

(ii) *Employees who have already separated.* If the employee has already separated and all payments due from his or her former paying agency have been paid, the DOT operating element may request, unless otherwise prohibited for example by court order, that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 et seq.) or other similar funds, be administratively offset in order to collect the debt (see 31 U.S.C. 3716 and the FCCS).

(iii) *Employees who transfer from one paying agency to another.* If, after the DOT creditor operating element has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates shall certify the total amount of the collection made on the debt. One copy of the certification shall be furnished to the employee and another to the DOT operating element along with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency shall, in accordnce with the DOT operating element's properly certified claim, resume the collection from the employee's current pay account and notify the employee and the DOT creditor operating element of the resumption. The DOT operating element is not required to repeat the required collection procedures from the beginning in order to resume the collection. However, it shall be the responsibility of the DOT creditor operating element to review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 92.43 Requests for recovery when the Department is the paying agency.

(a) *Incomplete request for recovery.* If the request for recovery received by the chief of the accounting or finance office of the appropriate DOT operating element is incomplete in any respect (see § 92.21(b)) including, but not limited to, the failure to certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the creditor agency's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 were approved by OPM, the request shall be returned to the creditor agency with a statement of the deficiency. No action to implement salary offset may be initiated until a complete request has been received.

(b) *Complete request for recovery.* If a complete request for recovery is received by the chief of the accounting or finance office of the appropriate DOT operating element, a copy of the request and any supporting documentation shall be transmitted to the appropriate payroll office, and deductions shall be scheduled to begin at the next officially established pay interval. A copy of the request and any supporting documentation shall be provided to the debtor, along with a notice of the date deductions will begin.

(c) The DOT operating element may not review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the request for recovery.

§ 92.45 Other debt collections.

Separate rules exist for general collection of debts owed the United States under 31 U.S.C. 3711, 3716-18; 4 CFR Ch. II.

Attachment 1

DEBT CLAIM FORM

1. Paying agency identification	2. Employee identification
a. Name	a. Name
b. Address	b. Address
	c. DOB d. SSN

To liquidate a debt to the United States, the named creditor agency asks that the debt be collected as shown from the current pay of the employee identified above. Notices and inquiries concerning the debt should be sent to the address shown below.

3. Debt information

a. Reason for debt:			
b. Date right to collect accrued	c. Debt identification number, if any		
d. Original debt: amount $	e. Number of installments	#	Amount $
f. Interest due (if none, show N/A $			$
g. Penalty due (if none, show N/A $			$
h. Administrative cost (if none, show N/A $			$
i. Total collection to be made $	j. Commence deductions on (date)		

4. Due process: ☐ date actions taken; or attach ☐ acknowledgement ☐ consent

	Creditor agency 30-day salary offset notice		Hearing held	
	Employee did not respond (consent assumed)		Decision for creditor agency	
	Employee requested a hearing		Other -	

I certify the following: (1) the debt identified above is properly due the United States from the named employee in the amount shown; (2) this agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and (3) the information concerning this agency's and the employee's actions is correct as stated.

5. Creditor agency information

a. Name	b. Appropriation/fund (title/symbol #)
c. Address	d. Disbursing officer (name/symbol #)
e. Signature of certifying official	f. Date
g. Title	h. Telephone number

PART 93—AIRCRAFT ALLOCATION

Sec.
93.1 Issuance of aircraft allocations.
93.3 Reporting requirements.

AUTHORITY: Sec. 9, 80 Stat. 944; 49 U.S.C. 1657.

§ 93.1 Issuance of aircraft allocations.

From time to time, the Director, Office of Emergency Transportation, issues planning orders allocating aircraft to the Department of Defense, identified by FAA registration number for the Civil Reserve Air Fleet Program, or as a reserve fleet for use in certain contingencies in the Civil Reserve Air Fleet Program of the Department of Defense. The current listing of aircraft allocations may be obtained upon request from the Director, Office of Emergency Transportation, Department of Transportation, Washington, D.C. 20590.

[32 FR 20778, Dec. 23, 1967, as amended by Amdt. 93-1, 33 FR 7821, May 29, 1968]

§ 93.3 Reporting requirements.

In the event any aircraft identified in the allocations in effect:

(a) Is destroyed or suffers major damage the owner or operator, or both, shall give immediate notice thereof to the Director, Office of Emergency Transportation; or

(b) Is sold, leased, or otherwise transferred, the transferor or owner, or both, shall give immediate notice thereof to the Director, Office of Emergency Transportation, together with full information concerning the identity of the transferee, the date and place of transfer, and the terms and conditions of the transfer.

[32 FR 20778, Dec. 23, 1967]

PART 95—ADVISORY COMMITTEES

Sec.
95.1 Applicability.
95.3 Definitions.
95.5 Use of advisory committees generally.
95.7 Industry advisory committees: Membership.
95.9 Meetings; other than industry advisory committees.
95.11 Meetings; industry advisory committees.
95.13 Antitrust laws.
95.15 Conflicts of interest statutes, orders, and regulations.

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657); E.O. 11007, 3 CFR, 1959-1963 Comp., p. 573.

SOURCE: 33 FR 467, Jan. 12, 1968, unless otherwise noted.

§ 95.1 Applicability.

(a) This part prescribes uniform regulations governing the formation and use of advisory committees by the Office of the Secretary of Transportation, the U.S. Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Urban Mass Transportation Administration, the National Highway Traffic Safety Administration, and the St. Lawrence Seaway Development Corporation. It does not apply to the National Transportation Safety Board.

(b) This part applies to advisory committees formed or used by the organizations named in paragraph (a) of this section. It also applies to those organizations whenever they affiliate with, participate in, or use similar advisory committees formed or used by other departments or agencies of the Executive Branch of the Government, unless specifically exempted under paragraph (c) of this section. Advisory committees whose membership includes "consultants and advisers" are subject to this part regardless of whether those members are considered to be Government employees on the days they attend committee meetings.

(c) This part does not apply to:

(1) Any advisory committee the purpose, composition, and operation of which is specified by statute, unless and to the extent that statute authorizes the President to prescribe regulations for the committee's formation and use.

(2) Any advisory committee composed wholly of representatives of State or local agencies or of charitable, religious, educational, civic, social welfare, or similar nonprofit organizations.

(3) Any local, regional, or national committee whose only function is to

disseminate information for public agencies, or any local civil committee whose primary function is to perform a public service, other than giving advice or making recommendations to the Government.

[33 FR 467, Jan. 12, 1968, as amended by Amdt. 95-2, 35 FR 5331, Mar. 31, 1970; Amdt. 95-3, 36 FR 431, Jan. 13, 1971]

§ 95.3 Definitions.

For the purposes of this part:

(a) "Advisory committee" includes any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee, or other subgroup thereof, which is formed within the Department in the interest of obtaining advice or recommendations, or for any other purpose, and which is not composed wholly of officers or employees of the Government. It also includes any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or subgroup thereof, which is not formed within the Department, but only during the period it is being used by the Department in the same manner as a Government-formed advisory committee.

(b) "Industry advisory committee" includes any advisory committee composed predominately of members or representatives of a single industry or group of related industries, or any subdivision of a single industry, made on a geographic, service, or product basis.

(c) "Department" means Department of Transportation.

(d) "Secretary" means the Secretary of Transportation.

§ 95.5 Use of advisory committees generally.

(a) Advisory committees are formed to provide a means of obtaining advice, views, and recommendations of benefit to the operations of the Government from industrialists, businessmen, scientists, engineers, educators, and other public and private citizens whose experience and talents would not otherwise be available to the Department. An advisory committee may be used when its counsel is desired on matters under consideration by any part of the Department. Unless specifically authorized by law to the contrary, no advisory committee may be used for functions which are not solely advisory. Determinations of action to be taken with respect to matters upon which an advisory committee advises or recommends may be made only by a full-time, salaried officer or employee of the Government.

(b) An advisory committee may be established to serve the Department as a whole, the Office of the Secretary, any operating administration, any combination of the Office of the Secretary and the operating administrations, or the operating administrations collectively. However, no advisory committee may be formed or used unless (1) the committee is specifically authorized by law, or (2) the committee is specifically approved, in writing, by the Secretary or his designee, to be in the public interest in connection with the performance of duties imposed on the Department or any part of it.

§ 95.7 Industry advisory committees: Membership.

Each industry advisory committee must be reasonably representative of the group of industries, the single industry, or the product segment thereof to which it relates, taking into account the size and function of business enterprises in the industry or industries and their location, affiliation, and competitive status among other factors. Selection of industry members shall, unless otherwise provided by statute, be limited to persons actively engaged in operations in the particular industry, industries, or segments concerned, except in cases in which the Secretary or his designee considers that such a limitation would interfere with effective committee operations.

§ 95.9 Meetings; other than industry advisory committees.

(a) Meetings of an advisory committee, other than an industry advisory committee, may be held only at the call, or with the advance approval, of a full-time, salaried officer or employee of the Department, with an agenda formulated or approved by that officer or employee.

(b) Each meeting shall be chaired by, or be conducted in the presence of, a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he considers it to be in the public interest.

(c) Minutes shall be kept of each meeting. As a minimum, the minutes must contain a record of the persons present, a description of the matter discussed and conclusions reached, and a copy of any report received, issued, or approved by the committee. The accuracy of all minutes must be certified to by a full-time, salaried officer or employee of the Government who was present during the meeting to which the minutes pertain.

(d) The Secretary or his designee may waive any requirement of this section in any case in which he determines that:

(1) Compliance with that requirement would interfere with the proper functioning of the committee or would be impracticable;

(2) Adequate provisions are made to assure otherwise that the operation of the committee is subject to Government control and purpose; and

(3) The waiver is in the public interest.

§ 95.11 Meetings; industry advisory committees.

(a) Meetings of an industry advisory committee may be held only at the call of a full-time, salaried officer or employee of the Department, with an agenda formulated by that officer or employee.

(b) Each meeting shall be chaired by a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he considers it to be in the public interest. The Secretary or his designee may waive the requirements of this paragraph in any case in which he determines that:

(1) Compliance with that requirement would interfere with the proper functioning of the committee or would be impracticable;

(2) Adequate provisions are made to assure otherwise that the operation of the committee is subject to Government control and purpose;

(3) The waiver is in the public interest; and

(4) The meeting will be conducted in the presence of a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he considers it to be in the public interest.

(c) A verbatim transcript shall be kept of the proceedings at each meeting, including the name of each person present, his affiliation, and the capacity in which he attended, except in any case in which the Secretary or his designee determines that a verbatim transcript would interfere with the proper functioning of the committee or would be impracticable and therefore waives the requirement as being in the public interest. In such a case the procedure prescribed in § 95.9(c) applies.

(d) No industry advisory committee may receive, compile, or discuss data or reports showing the current or projected commercial operations of any identified business enterprise.

[33 FR 467, Jan. 12, 1968, as amended by Amdt. 95-1, 33 FR 6913, May 3, 1968]

§ 95.13 Antitrust laws.

The activities of advisory committees are subject to the antitrust laws and committee members are not immune from prosecution under those laws. The Department of Justice takes the position that it retains complete freedom to institute proceedings, either civil or criminal, or both, in the event that any particular plan or course of action is used to accomplish unlawful private ends, and to institute civil actions to enjoin continuance of any act or practices found not to be in the public interest and persisted in after notice to desist. This part is intended to minimize the possibility of violating the antitrust laws. Industry representatives and Government personnel officially connected with advisory committees should be advised of the antitrust aspects of the committee activity.

§ 95.15 Conflicts of interest statutes, orders, and regulations.

There is a body of statutes, orders, and regulations prescribed by the

President, the Secretary, and other authorities, dealing with conflicts of interest and designed to prevent any conflict between the official duties and status of Government officers and employees and their private interest. Government officers and employees are required to comply with all applicable laws, orders, and regulations. Part 99 of this chapter sets forth a comprehensive list of the conflicts of interest statutes and guidelines for the employees of the Department to follow in the application of these statutes to part-time advisers and consultants to the Government. Any officer or employee appointed to serve on an advisory committee who has any doubt or question respecting a possible conflict of interest shall seek specific legal advice on his individual situation.

PART 98—ENFORCEMENT OF RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES

Subpart A—Administration of Enforcement Proceedings

Sec.
98.1 Purpose.
98.2 Definitions.
98.3 Reports of apparent violations.
98.4 Initiation of administrative disciplinary proceeding.
98.5 Former employee response to notice.
98.6 Examiner.
98.7 Hearing.
98.8 Decision by examiner.
98.9 Decision if hearing waived.
98.10 Appeal.
98.11 Final administrative decision.

Subpart B—Administrative Sanctions

98.12 Administrative sanctions.

Subpart C—Judicial Review

98.13 Judicial review.

Authority: 18 U.S.C. 207; Pub. L. 96-28.

Source: 48 FR 12383, Mar. 24, 1983, unless otherwise noted.

Subpart A—Administration of Enforcement Proceedings

§ 98.1 Purpose.

The purpose of this part is to set forth the administrative enforcement procedures that the Department of Transportation will follow when there is an allegation that a former employee of the Department has violated 18 U.S.C. 207.

§ 98.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) "Administration" means each of the following:

(1) The United States Coast Guard.

(2) The Federal Aviation Administration.

(3) The Federal Highway Administration.

(4) The Federal Railroad Administration.

(5) The National Highway Traffic Safety Administration.

(6) The Urban Mass Transportation Administration.

(7) The Saint Lawrence Seaway Development Corporation.

(8) The Research and Special Programs Administration.

(9) The Maritime Administration.

(b) "Department" means the Department of Transportation.

(c) "18 U.S.C. 207" means 18 U.S.C. 207 (a), (b), or (c) or any regulations issued under 18 U.S.C. 207.

(d) "Secretary" means the Secretary of Transportation.

§ 98.3 Reports of apparent violations.

Any person may report, to the Assistant General Counsel for Environmental, Civil Rights and General Law, an apparent violation by a former employee of the Department of 18 U.S.C. 207.

§ 98.4 Initiation of administrative disciplinary proceeding.

(a) Whenever the Assistant General Counsel for Environmental, Civil Rights and General Law has determined that there is reasonable cause to believe that a former Departmental employee has violated 18 U.S.C. 207, the Assistant General Counsel for Environmental, Civil Rights, and General Law:

(1) Shall expeditiously provide that information to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice; and

(2) After coordinating any proceeding with the Criminal Division, Department of Justice, to avoid prejudicing criminal proceedings, may institute an administrative disciplinary proceeding in accordance with this part.

(b) The person who shall provide for the prosecution of the alleged violation in an administrative disciplinary proceeding under this part (hereinafter referred to as the "Departmental counsel") is:

(1) In a case where the last Departmental employer of the alleged violator is the Office of the Secretary, the Assistant General Counsel for Environmental, Civil Rights and General Law, or his or her designee; or

(2) In a case where the last Departmental employer of the alleged violator is an administration, the Chief Counsel, or his or her designee, for that administration.

(c) Before beginning an administrative disciplinary proceeding, the Departmental counsel shall provide the former employee with actual notice of the institution of a proceeding. This notice must include:

(1) A statement of allegations and the basis for those allegations, which statement must be sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing;

(3) An explanation of the method by which a hearing may be requested; and

(4) A statement of the possible sanctions that may be imposed if a violation by the former employee is found to have occurred.

§ 98.5 Former employee response to notice.

(a) Within 30 working days after service of a notice pursuant to § 98.4(c), the former employee may submit to the Departmental counsel in writing:

(1) A request for a hearing, which, if not all issues are disputed by the former employee, should specify those issues that are;

(2) Any evidence and arguments in lieu of a hearing or

(3) A statement that the allegations are true and set forth any factors that should be considered in determining the administrative sanction to be imposed.

(b) The Department shall deem the right to a hearing to have been waived by the former employee if the former employee does not submit a request under paragraph (b)(1) of this section within 30 working days after service of notice pursuant to § 98.4(c).

§ 98.6 Examiner.

(a) The presiding official at a hearing held under this part and the deciding official under § 98.9 of this part (hereinafter referred to as the "examiner") shall be designated by the Secretary.

(b) The examiner shall not have been involved in any of the events specified in the allegations, shall not have been involved in the investigation of the allegations and the institution of the proceedings under this part, and shall not be or have been employed by the administration, or the Office of the Secretary if applicable, in which the alleged violation occurred.

§ 98.7 Hearing.

(a) The examiner shall, within 30 working days of a request for a hearing under § 98.5(b), schedule the hearing for a reasonable time, date, and place. The examiner shall grant any delays or continuances that the examiner determines to be necessary and appropriate for fair resolution of the case, with due regard to the former employee's need for adequate time to prepare a defense and for expeditious resolution of allegations that may be damaging to that former employee's reputation.

(b) The following rights shall be granted to a former employee who requests a hearing under § 98.5(b):

(1) To represent oneself or to be represented by counsel.

(2) To introduce and examine witnesses and to submit physical evidence.

(3) To confront and cross-examine adverse witnesses.

(4) To present oral argument.

(5) To obtain a transcript or recording of the hearing on request from the official reporter upon payment of the fees fixed therefor.

(c) In a hearing under this part, the Federal Rules of Civil Procedure and Evidence do not apply. However, the examiner may make such orders and determinations regarding discovery, admissibility of evidence, conduct of examination and cross-examination, and similar matters the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties.

§ 98.8 Decision by examiner.

(a) In a hearing under § 93.7 of this part, the Departmental counsel must establish a violation by a preponderance of the evidence.

(b) The examiner shall make a decision exclusively on matters of record in the proceeding and shall set forth in the decision:

(1) All findings of fact relevant to the matters at issue;

(2) All conclusions of law relevant to the matters at issue; and

(3) The sanction to be imposed, if any.

§ 98.9 Decision if hearing waived.

(a) If the former employee waives or, in accordance wtih § 98.5(b) of this part, is deemed to have waived a hearing under this part, the examiner shall, after review of the record as it exists, make a decision as to whether the former employee is in violation of 18 U.S.C. 207.

(b) In a decision under paragraph (a) of this section, the requirements of § 98.8 of this part apply.

§ 98.10 Appeal.

(a) Within 30 working days after receipt of a decision issued under § 98.8 or § 98.9 of this part, either the Departmental counsel or the former employee may appeal the decision to the Secretary.

(b) In making a decision on an appeal, the Secretary shall consider only the evidence admitted during the prior proceeding and contained in the record of that proceeding.

(c) If the Secretary modifies or reverses the initial decision, the Secretary shall specify the findings of fact and conclusions of law that are different from those of the examiner.

§ 98.11 Final administrative decision.

The final administrative decision under this part shall be:

(a) The decision of the examiner under § 98.8(b), if there is no appeal under § 98.10;

(b) The decision by the examiner under § 98.9, if a hearing is waived or is deemed to have been waived and there is no appeal under § 98.10; or

(c) The decision of the Secretary on an appeal under § 98.10.

Subpart B—Administrative Sanctions

§ 98.12 Administrative sanctions.

(a) The Secretary, in decisions under § 98.10 of this part, and the examiner, in decisions under § 98.8 and § 98.9 of this part, may impose an administrative sanction against a former employee who, after a final administrative decision under this part, is found to be in violation of 18 U.S.C. 207.

(b) The administrative sanctions that may be imposed under subsection (a) of this section are:

(1) Prohibiting the former employee from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of any of its administrations on any matter of business for a period not to exceed five years; or

(2) Taking other appropriate disciplinary action, such as a reprimand or suspension from participation in a particular matter or matters before the Department.

Subpart C—Judicial Review

§ 98.13 Judicial review.

Any former employee found to have violated 18 U.S.C. 207 by a final administrative decision under this part may seek judicial review of disciplinary action imposed under this part.

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General

Sec.

99.735-1 Purpose and policy.
99.735-3 Definitions.
99.735-5 Applicability.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

99.735-7 General.
99.735-9 Gifts, entertainment, favors, employment and reimbursement of expenses.
99.735-11 Outside employment and other activities.
99.735-13 Financial interests.
99.735-15 Disqualification arising from private financial interests.
99.735-17 Use of Government property or official title.
99.735-19 Misuse of information.
99.735-21 Indebtedness.
99.735-23 Gambling, betting, or lotteries.
99.735-25 Miscellaneous statutory provisions.

Subpart C—Statements of Employment and Financial Interest

99.735-31 Employees required to submit statement.
99.735-33 Time and place for submission of employee statements.
99.735-35 Supplementary statements.
99.735-37 Interest of employee's relatives.
99.735-39 Information not known by employee.
99.735-41 Information not required.
99.735-43 Confidentiality of employee's statement.
99.735-45 Effect of employee statements on other requirements.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

99.735-51 Use of Government employment.
99.735-53 Use of inside information.
99.735-55 Coercion.
99.735-57 Gifts, entertainment, and favors.
99.735-59 Miscellaneous statutory provisions.
99.735-61 Specific regulations for special Government employees.

Sec.

Subpart E—Counseling; Interpretation; Review of Statements; Remedial Actions

99.735-71 Interpretation and advisory service.
99.735-73 Review of statements.
99.735-75 Remedial actions.
99.735-77 Appeals.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

99.735-81 Post-employment duties and responsibilities.
APPENDIX A—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(a) OF TITLE 18, UNITED STATES CODE
APPENDIX B—MISCELLANEOUS STATUTORY PROVISIONS RELATING TO EMPLOYEE CONDUCT
APPENDIX C—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST
APPENDIX D—EXTRACT FROM APPENDIX C OF CIVIL SERVICE FEDERAL PERSONNEL MANUAL SYSTEM ON SPECIAL GOVERNMENT EMPLOYEES (INCLUDING GUIDELINES FOR OBTAINING AND UTILIZING THE SERVICES OF SPECIAL GOVERNMENT EMPLOYEES)
APPENDIX E—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES

AUTHORITY: 49 U.S.C. 322; E.O. 11222, 3 CFR 1964-1965 Comp., p. 306.

SOURCE: Amdt. 99-10, 42 FR 3119, Jan. 14, 1977, unless otherwise noted.

Subpart A—General

§ 99.735-1 Purpose and policy.

(a) This part sets forth standards of ethical and other conduct, and reporting requirements, for employees and special Government employees of the Department of Transportation. It implements Executive Order 11222 (30 FR 6469) and Part 735 of Chapter I of Title 5 of the Code of Federal Regulations (30 FR 12529), as amended (33 FR 12487). The standards and requirements are appropriate to the particular functions and activities of the Department.

(b) Since the efficient operation of the Department requires continued public confidence in its employees, acts which may result in the appearance of a conflict of interest also are governed by this part. The absence of a specific published standard of conduct covering an act which would tend to discredit the Department, and/or an employee or special Government employee of the Department does not mean that such an act is condoned, is permissible, or would not call for the result in corrective or disciplinary action.

(c) The President has stated the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or advisor of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

Personnel of the Department are expected to adhere to the President's message and to standards of conduct that will reflect credit on the Government.

§ 99.735-3 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Department" means the Department of Transportation, including the Office of the Secretary, nonappropriated fund activities, and the following operating administrations:

(a) The U.S. Coast Guard;

(b) The Federal Aviation Administration;

(c) The Federal Highway Administration;

(d) The Federal Railroad Administration;

(e) The National Highway Traffic Safety Administration;

(f) The Urban Mass Transportation Administration;

(g) The St. Lawrence Seaway Development Corporation; and

(h) The Research and Special Programs Administration..

"Employee" means an officer or employee of the Department and an active duty officer or enlisted member of the Coast Guard, but does not include any special Government employee.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed.

"Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

"Shall" is used in an imperative sense.

"Special Government employee" is a "special Government employee" of the Department as defined in section 202 of Title 18, United States Code, which includes, but is not limited to "* * * an officer or employee of the executive branch of the United States Government, of any independent agency of the United States * * * who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermitent basis, * * *" "* * * a Reserve officer of the Armed Forces * * * unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training," and "a Reserve officer of the Armed Forces * * * who is serving involuntarily. * * *"

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977, as amended by Amdt. 99-13, 43 FR 54251, Nov. 21, 1978]

§ 99.735-5 Applicability.

(a) This part applies to the following:

(1) Each employee of the Department.

(2) Each special Government employee of the Department.

(3) Each civilian employee or member of an armed force who is detailed to the Department.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 99.735-7 General.

(a) Each employee shall avoid any action, whether or not specifically prohibited by this part, which might result in or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside of official channels [or not in accordance with applicable published procedures or statutory requirements; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) Employees shall not engage in criminal, dishonest, infamous, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the Government.

§ 99.735-9 Gifts, entertainment, favors, employment and reimbursement of expenses.

(a) Except as provided in paragraphs (b) through (e) of this section, an employee shall not solicit, or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Department.

(2) Conducts operations or activities that are regulated by the Department, or

(3) Has interests which may be substantially affected by the performance or nonperformance of that employee's official duties.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting, or on an inspection tour if the employee is properly in attendance and there is not a reasonable opportunity to pay;

(3) Accept a loan from a bank or other financial institution on customary terms to finance proper and usual activities of the employee such as a home mortgage loan; or

(4) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) In seeking employment with an organization described in paragraphs (a) (1), (2) and (3) of this section, an employee must be aware of the great potential for the appearance of a conflict of interest, and Federal law which prohibits certain kinds of employment. Accordingly, in soliciting employment an employee shall not:

(1) Solicit such employment if acceptance thereof would cause a violation of section 207 or 208 of title 18 of the U.S. Code;

(2) Permit the prospect of employment otherwise permitted by these regulations to influence the performance or nonperformance of his or her duties;

(3) Communicate or use information of particular interest to the prospective employer even if such information is available to the public generally; or

(4) Indicate, directly or indirectly, that he or she would be able to offer information or special relationships with officials of the Department.

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. An employee who violates this paragraph shall be removed from Government service in accordance with 5 U.S.C. 7351. However, this paragraph does not prohibit a voluntary gift of nominal value or the solicitation or making of a voluntary donation in a nominal amount to a gift made on a special occasion such as marriage, illness, resignation, retirement, or transfer.

(e) An employee shall not accept a gift, present, decoration, medal, badge or other emblem from a foreign government or from an agent acting on behalf of a foreign government; however, this section does not prohibit an employee from either (1) accepting and retaining a gift of nominal value given as a souvenir or mark of courtesy, or (2) accepting of a gift of more than nominal value when it appears that to refuse such gift would cause embarrassment, or offense, or adversely affect the foreign relations of the United States, provided that such gift is accepted on behalf of the United States and shall be reported to the Department Counselor in writing and used or disposed of as the property of the United States. This subsection is adopted pursuant to Article I, Section 9 of the United States Constitution and section 7342 of Title 5 of the U.S. Code.

(f) Except as provided in 5 U.S.C. 4411, an employee shall not accept reimbursement from a non-Federal source for expenses incurred in connection with travel or official business.

(g) The Department may accept reimbursement for an employee's expenses incurred in connection with travel on official business except where the acceptance of reimbursement by the employee would constitute a conflict or apparent conflict of interest.

(h) An employee shall not accept reimbursement from any private source for expenses incurred in connection with voluntary travel by the employees on their own time to the extend that such reimbursement exceeds ordinary and reasonable transportation and subsistence costs or otherwise constitutes a conflict or apparent conflict of interest.

§99.735-11 Outside employment and other activities.

(a) An employee shall not engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; and

(2) Outside employment which tends to impair mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Although employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, Executive Order 11222, Civil Service Commission regulations or this part, an employee shall not engage in such activities under circumstances:

(1) Which might result in a conflict or apparent conflict of interest;

(2) Which depend on information or official data obtained as a result of government employment, except when the information has been made available to the general public, or when an appropriately designated official gives written authorization for use of nonpublic information following a determination that the basis for the use is in the public interest; or

(3) Which tend to impair the employee's mental or physical capacity to perform government duties and responsibilities in an acceptable manner.

(d) *Honoraria.* (1) A Presidential appointee covered by Section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Department, or which draws substantially on official data or ideas which have not become public information.

(2) Any employee, other than those described in paragraph (d)(1) of this section, may receive compensation or other thing of monetary value for any lecture, discussion, writing or appearance the subject matter of which is devoted to the responsibilities, programs or operations of the Department, or which draws on official data or ideas of the Department, provided that any such employee shall disclose to the General Counsel of the Department within five business days following the event, the source, amount or value and data of receipt of all compensation or other thing of monetary value. All disclosures under this section shall be

subject to public inspection and availability.

(e) If an activity permissible under paragraph (c) or (d) of this section is to be undertaken as official duty, expenses will be borne by the Deparment, and the employee shall not accept compensation or allow his or her expenses to be paid by the person or group under whose auspices the activity is being performed. If it is determined that an activity under paragraph (c) or (d)(2) is to be undertaken in a private capacity, the employee may not use duty hours or Government property including equipment and supplies, for that purpose, but may accept compensation, and may subject to § 99.735-17(b), use his or her official title only if it is made clear that he or she does not represent the Department.

(f) [Reserved]

(g) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law (5 U.S.C. 7321-7327).

(2) Participation in the affairs of, or acceptance of an award given or to be given on a regular basis for, a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civil organization; or

(3) Outside employment that is not otherwise prohibited.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735-13 Financial interests.

(a) An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his Government duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in § 99.735-15 shall be followed.

(b) An employee shall not engage in, directly or indirectly, a financial transaction as a result of, or relying primarily on, information obtained through his Government employment if that information has not been made available to the general public.

(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government as long as it is not prohibited by law, Executive Order 11222, or this part.

(d) All employees, whether or not subject to the disclosure requirements of Appendix C, shall promptly report within ten days of such events, all transactions involving real or personal property in which the employee has an interest and in which the Department is a buyer, seller, lessee, lessor or otherwise acquires or divests itself of an interest in such property.

§ 99.735-15 Disqualification arising from private financial interests.

(a) Section 208 of title 18, United States Code, provides criminal penalties for any employee who participates personally and substantially, as a Government employee, in certain matters in which, to the employee's knowledge, the employee, the employee's spouse, minor children, or certain other persons, have a financial interest. In administering this section and implementing section 208 of title 18, policies set forth in § 99.735-13 are controlling. For exemptions from section 208, see paragraph (h) of this section.

(b) The kinds of participation covered by section 208 include but are not limited to, any decision, approval, disapproval, recommendation, investigation or furnishing of advice, in any proceeding, application, request for ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter Section 208 of title 18 United States Code applies to these matters when a financial interest therein is possessed by the participating employee, his spouse, minor child, or partner, or by an organization in which the employee is serving as an officer, director, trustee, partner or employee, or by any person or organization with which the employee is negotiating or has arrangements concerning prospective employment.

(c) The words "other particular matter" in the first sentence of paragraph (b) of this section are intended to refer to matters in which the employee concerned may reasonably anticipate that his participation or advice will have a direct and predictable effect on the financial interest referred to in the second sentence of paragraph (b) of this section. While not restricted to matters involving a specific party or parties, the words "other particular matter" nevertheless do not necessarily include rule making of wide applicability, the formulation of general policy or standards, or similar matters of broad scope.

(d) Before an employee may participate in a matter to which he or she knows, or should reasonably know, section 208 applies he or she must either cause the financial interest involved to be divested or request a determination of the propriety of participation in such matter by informing in writing the official for his or her appointment of the nature and circumstances of the matter and the financial interest involved.

(e) After examining the information submitted, the said appointing official shall:

(1) Cause the employee to be relieved from participation in the matter and reassign it to another employee who is not subordinate to the relieved employee; or

(2) Approve the employee's participation upon determining in writing (a copy of which shall be placed in the employee's personnel file) that the interest or the participation involved is not so substantial as to be likely to affect the integrity of the services the Government may expect from the employee thereby making section 208 inapplicable to the matter; or

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(f) In any case in which a responsible official has reason to believe that an employee may have an interest that would be disqualifying under this section, said responsible official shall discuss the matter with the employee. If he finds that the interest exists, he may take any of the actions stated in paragraph (e) of this section.

(g) A holding in a trust whose terms direct the trustee to manage solely in accord with his own judgment and not to disclose to the beneficiary, in any manner, the specific dealings and holdings (a so-called "blind trust") may be exempted from the prohibitions of this section, when an employee or a member of the employee's household is the beneficiary, upon a finding by the General Counsel of the Department that the employee is in fact unaware or is unable to determine what interests are held in the trust. Thus, a "blind trust" consisting of an interest in only one company or industry will not be exempted if the employee could reasonably be expected to assume that the trustee has not divested the trust of that interest.

(h) Exemptions. Information concerning categories of financial interests which are exempted from the prohibitions of section 208(a) of title 18, United States Code, as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix A.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735-17 Use of Government property or official title.

(a) An employee shall not, directly or indirectly, use or allow the use of Government property of any kind, including property leased to the Government, for other than an officially approved activity. Each employee has a positive duty to protect and conserve Government property, including all equipment, supplies, and other property.

(b) An employee shall not directly or indirectly, use or allow the use of his title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

§ 99.735-19 Misuse of information.

Except as provided in § 99.735-11(d) an employee shall not for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with his Government employment, if that information has not been made available to the general public.

§ 99.735-21 Indebtedness.

Each employee shall pay his just financial obligations in a proper and timely manner. For the purposes of this section "just financial obligations" means those imposed by law such as Federal, State, or local taxes or those that are recognized as such by the employee or reduced to a judgment by a court. "In a proper and timely manner" means in a manner which, considering all circumstances, will not reflect adversely on the Government as employer. The Department will not determine the validity or amount of a disputed debt and will not act to collect such debts, except as provided in the Federal Wage Garnishment Law (42 U.S.C. 659).

§ 99.735-23 Gambling, betting, or lotteries.

An employee shall not, while on Government owned or leased property, or while on duty for the Government, participate in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in buying or selling a numbers slip or ticket. However, this section does not prevent an employee from engaging in activities:

(a) Necessitated by his law enforcement duties; or

(b) Under section 3 of the Executive Order 10927, relating to fundraising activities for national voluntary agencies, or similar activities approved by the Department. Employees are reminded that illegal gambling is prohibited by the provisions of § 99.735(b), supra.

§ 99.735-25 Miscellaneous statutory provisions.

It shall be the duty of each employee to become acquainted with the laws which relate to ethical and other conduct as an employee of the Department and of the Government. The attention of employees is specifically directed to the statutory provisions set forth in Appendix B.

Subpart C—Statements of Employment and Financial Interest

§ 99.735-31 Employees required to submit statement.

(a) Unless required to report to the Chairman of the Civil Service Commission under section 401(a) of Executive Order 11222, each of the following employees shall submit a statement of employment and financial interest on a form provided by the Department:

(1) Each employee paid at a level of the Executive schedule under subchapter II of Chapter 53 of Title 5, United States Code.

(2) Each employee classified as GS-13 or above under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0-5 or above, who is in a position identified in Appendix C as a position the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities where the decision or action has an economic impact on the interests of a non-Federal enterprise.

(3) Each employee classified at GS-13 or above under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0-5 or above, who is in a position identified in Appendix C as having duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of Title 18, Executive Order 11222, and this part; and

(4) Each employee classified below GS-13 under section 5332 of Title 5, United States Code or at a comparable pay level under another authority, or in a military pay grade below 0-5, who is in a position which otherwise meets the criteria in paragraph (a)(2) or (3) of this section, on the basis that the inclusion has been specifically justi-

fied in writing to the Civil Service Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(b) The Assistant Secretary for Administration and the head of each operating administration shall ensure that the portion of Appendix C enumerating positions within their respective jurisdictions is current, accurate and that the incumbents of those positions enumerated file their financial interest statements with the appropriate official. To discharge their responsibilities under this paragraph, the Assistant Secretary for Administration and the head of each operating administration shall, as necessary, amend the portion of Appendix C concerning positions within their jurisdiction, obtain necessary clearance from the Civil Service Commission for positions at GS-12 and below and publish such amendments in the FEDERAL REGISTER. At the time of such publication in the FEDERAL REGISTER, a copy of all such amendments shall be transmitted to the General Counsel.

(c) Any employees in a position which meets the criteria in paragraph (a)(2) of this section may be excluded from the reporting requirements of this section whenever the Secretary, or his designee, or the head of an operating administration or his designee, as appropriate, determines that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review and the remote or inconsequential effect on the integrity of the Government.

(d) Information concerning financial interests which have been exempted under Appendix A from the prohibitions of section 208(a) of title 18, United States Code, shall nevertheless be included in the statement required by this section.

§ 99.735-33 Time and place for submission of employee statements.

(a) Each employee who is subject to the reporting requirements of § 99.735-31 shall submit an employment and financial interest statement not later than:

(1) Forty-five days after the effective date of this part, if employed by the Department on or before that date; or

(2) Thirty days after entering on duty, but not earlier than 30 days after the effective date of this part, if appointed after that effective date.

(3) Thirty days after the occurrence of any event, transaction or any other thing which obligates an employee not otherwise required to submit a statement, to file such statement, but not earlier than thirty days after the effective date of this part.

(b) Each employee who is subject to the reporting requirements of § 99.735-31 shall submit his employment and financial interest statement, including supplements thereto, as follows:

(1) Heads of operating administrations and employees of the Office of the Secretary shall submit their statements to the Department Counselor for review.

(2) Other employees shall submit their statements to an official designated by the head of their administration for review. The official designated must be at level to which a Deputy Counselor has been assigned and higher in the chain of authority than the employee whose statement is being reviewed.

§ 99.735-35 Supplementary statements.

(a) Each employee required to file a statement shall, not later than July 31 of each year, file a supplementary statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employment and financial interest and call attention to any information previously unreported that may present a conflict because of different job functions. If no change or addition occurs, a negative report is to be filed stating that there have been no changes or additions. In addition all supplementary statements filed under this section shall contain a record of any changes which occurred at any time during the year for which the report is filed. Notwithstanding the filing of the annual statement required by this section, each employee shall at all times avoid acquiring any financial interest that could result, or taking any action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

(b) The head of each operating administration and the Assistant Secretary for Administration shall notify employees within their respective jurisdictions of the requirement to file a supplementary statement by July 31 of each year. However, no employee shall be relieved of the responsibility to file a timely supplementary statement on the ground of failure to receive individual notification.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735-37 Interest of employee's relatives.

Any interest of a spouse, minor child, or other relative who is a resident of the employee's household is considered to be an interest of the employee.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735-39 Information not known by employee.

If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding placed in trust, is not known to the employee but is known to another person (such as a trustee), the employee shall request that other person to submit the information on his or her behalf.

§ 99.735-41 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interest or supplementary statement any information relating to his connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purposes of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are considered to be "business enterprises" and are required to be included in the employee's statement of employment and financial interest.

§ 99.735-43 Confidentiality of employee's statement.

(a) Information provided in each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials, counselor, deputy counselors, and others who receive statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of this part. Information may not be disclosed to any person outside the Department, except as the Civil Service Commission or the Secretary may determine for good cause shown.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in a file as prescribed by the office or operating administration concerned, in accordance with the Privacy Act of 1974 (Pub. L. 93-579; 5 U.S.C. 552a(e)(11)) and guidelines issued thereunder.

§ 99.735-45 Effect of employee statements on other requirements.

Statements of employment and financial interest and supplementary statements required of employees and special Government employees are in addition to, and are not a substitute for or in derogation of, any similar requirements imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit said employee or any other person to participate in a matter in which that employee or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 99.735-51 Use of Government employment.

No special Government employee may use his Government employment for a purpose which is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has marital, business, or financial ties.

§ 99.735-53 Use of inside information.

A special Government employee shall not use inside information obtained as a result of Government employment for private gain for self or another person, whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom there is a marital, family, business, or financial tie. However, the section does not prevent a special Government employee from using inside information for the purpose of teaching, lecturing, or writing if an appropriately designated official authorizes, in writing, the use of such information upon a determination that any such use is in the public interest. For the purposes of this section, "inside information" means information obtained under Government authority which has not become a part of the body of public information.

§ 99.735-55 Coercion.

No special Government employee may use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom there is a marital, family, business, or financial tie.

§ 99.735-57 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee shall not, while employed by the Department, receive or solicit from any person having business with the Department anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom there is a marital, family, business, or financial tie.

(b) The exceptions authorized for employees under § 99.735-9 shall also apply to special Government employees.

§ 99.735-59 Miscellaneous statutory provisions.

Each special Government employee shall become acquainted with the statutes referred to in § 99.735-25 that relate to conduct as a special Government employee of the Department. Appendix D of this part explains the effect of the conflict of interest statutes on special Government employees. The Department follows the guidelines set forth in Appendix D of this part for obtaining and using the services of special Government employees.

§ 99.735-61 Specific regulations for special Government employees.

(a) Each special Government employee who is employed as an expert or consultant shall submit a statement of employment and financial interest, on a form provided by the Department, in the manner prescribed in §§ 99.735-33(b) and 99.735-35 no later than at the time of employment.

(b) Each special Government employee not employed as an expert or consultant shall submit a statement of employment and financial interest on a form provided by the Department, as provided in paragraph (a) of this section, unless an appropriate waiver is issued to him by the office or operating administration in which he or she is employed based upon a finding that the duties of his position are of such a nature and at such a level of responsibility that the submission of a statement by the special Government employee is not necessary to protect the integrity of the Government.

(c) For the purposes of this section, the words "consultant" and "expert" have the meaning given to them by chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) Each special Government employee shall keep his statement current throughout his employment by the Department by submitting supplementary statements within five days after a change required to be reported occurs.

(e) Each statement of employment and financial interest and each supplementary statement of a special Government employee shall be held in confidence and maintained in the same manner as prescribed for statements submitted by employees.

Subpart E—Counseling; Interpretation; Review of Statements; Remedial Actions

§ 99.735-71 Interpretation and advisory service.

(a) The General Counsel of the Department shall act as the Department Counselor and serves as the Department's designee to the Civil Service Commission on matters covered by this part and Part 735 of Chapter I of Title 5 of the Code of Federal Regulations. The Department Counselor is responsible for coordinating the Department's counseling services provided under paragraph (b) of this section, for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part and Part 735 of Chapter I of Title 5, Code of Federal Regulations are available to the Deputy Counselors designated in paragraph (b) of this section and may exercise the authority of the Secretary in any matter covered by this part.

(b) The following are designated as Deputy Counselors for the purpose of providing authoritative counseling and interpretations to employees and special Government employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by this part:

(1) The Assistant General Counsel for Operations and Legal Counsel, Office of the General Counsel.

(2) The chief legal officer of each operating administration of the Department, and his designees.

(c) Counseling on other ethical matters covered by this part will be provided by personnel specifically designated by the Assistant Secretary for Administration for employees in the Office of the Secretary, and by the head of the operating administration concerned, for employees of that administration.

(d) The Assistant Secretary for Administration shall ensure that each employee and special Government employee is furnished a copy, and a clear and comprehensive summary of these regulations within thirty days after approval of this part and within thirty days after approval of any amendments thereto. He shall also ensure that sufficient quantities are available to furnish each new employee and special Government employee a copy at the time of his or her entrance on duty.

§ 99.735-73 Review of statements.

(a) Each statement of employment and financial interest submitted under this part shall be promptly reviewed by the official authorized to receive that statement.

(b) Procedures governing the review of statements of employment and financial interest established by the office or operating administration concerned shall provide that:

(1) Whenever the review discloses an actual, apparent or alleged conflict of interest, the employee concerned is entitled to an opportunity to explain.

(2) If an actual, apparent or alleged conflict is not resolved on review by the explanation made by the employee concerned, the information pertaining to the matter shall be submitted to the head of the operating administration concerned or the Secretary, in the case of any employee of the Office of the Secretary.

(3) The resolution of a conflict or apparent conflict of interest either on review or after submittal under paragraph (b)(2) of this section shall be ef-

fected promptly so that the conflict or appearance of conflict is ended. The resolution of the conflict or appearance of conflict may be accomplished by one or more means, including any means listed in paragraph (b) of § 99.735-75. The resolution, whether by disciplinary action or otherwise, will be effected in accordance with applicable laws, Executive orders, and regulations.

(c) After review of a statement of employment and financial interest has been completed, the reviewing official shall ensure that it is filed and protected from disclosure as required by § 99.735-43.

§ 99.735-75 Remedial actions.

(a) A violation of this part by an employee or special Government employee may, in addition to any other penalty prescribed by law, be cause for appropriate disciplinary action by the Department.

(b) If, after consideration of the explanation provided by the employee or special Government employee concerned under § 99.735-73, it is determined that remedial action is required, immediate action shall be taken to end the conflict or appearance of conflict of interest. Remedial action may include:

(1) Divestment by the employee or special Government employee of his conflicting interest;

(2) Disqualification for a particular assignment;

(3) Changes in assigned duties; or

(4) Disciplinary action.

Remedial action, including disciplinary action where appropriate, shall be taken in accordance with applicable laws, Executive Orders, and regulations after consultation with the Department Counselor. When remedial action is completed, the person taking that action shall inform the Department Counselor, or deputy counselor, as appropriate.

§ 99.735-77 Appeals.

(a) Any employee who believes that his or her position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed under the employee grievance procedures applicable to the part of the Department in which employed.

(b) An employee has the right to appeal a determination requiring remedial or disciplinary action under this part. Such appeal shall be initiated in writing within ten days. Original determinations of the deputy counselors, or their designees, and the Assistant Secretary for Administration shall be appealed to the Departmental Ethics Counselor whose decision shall be final. Original determinations of the Departmental Ethics Counselor shall be appealed to the Secretary whose decision shall be final.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

§ 99.735-81 Post-employment duties and responsibilities.

The duties and obligations of a Government employee (or a special Government employee) do not end when government service terminates by retirement, resignation, or for any other reason. In fact the U.S. Code sets forth specific criminal penalties for certain activities by former Government employees. To summarize broadly, section 207 of Title 18, U.S. Code, prohibits a former Government employee from acting as agent or attorney in various types of proceedings and matters on behalf of a non-Government party when the employee was involved in the subject matter while working for the Government. The duration and nature of the prohibitions depend in part on the depth of the employee's involvement in the matter while in Government service. Section 208 of the same title relates to activities performed while a Government employee that benefit an employee's prospective private employer. All Government employees and special Government employees should become familiar with the provisions of the two statutory sections cited, which have been made a part of this regulation as Appendix E, so that they will be aware of the restrictions which might affect them upon their termination from the Government service.

APPENDIX A—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(a) OF TITLE 18, UNITED STATES CODE

I. (a) Pursuant to the authority of section 208(b) of Title 18, United States Code, the following are exempted from the prohibitions of section 208(a) of Title 18, United States Code, because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his governmental capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in an industry in which the possibility of conflict arise.

(2) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him or further payments to the plans by the organization with respect to the services of the employee. In addition, to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan, this exemption does not apply and the procedures prescribed in § 99.735-15c (c) through (e) will apply to the interest of that employee in the plan.

(3) Participation in an air carrier frequent flyers or substantially similar program that is available to the general public on the same terms and conditions and involves no direct financial interest in the carrier, such as stockholdings or similar types of investment interests.

[Amdt.99-10, 42 FR 3119, Jan. 14, 1977, as amended by Amdt. 99-14, 53 FR 16414, May 9, 1988]

APPENDIX B—MISCELLANEOUS STATUTORY PROVISIONS RELATING TO EMPLOYEE CONDUCT

The following is a list of statutory provisions to which the attention of each employee is specifically directed by § 99.735-25. The list does not include specific laws relating to ethical or other conduct in individual situations not applicable generally to the employees of the Department.

(a) House Concurrent Resolution 175, 85th Congress, 2nd session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination of personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(q) The prohibition against soliciting funds for, or giving of gifts to an official superior (5 U.S.C. 7351).

(r) The statutory provisions setting forth the prohibitions on an employee or special government employee after termination of Government service (18 U.S.C. 207, 208).

(s) The statutory provisions in the Federal Election Act (2 U.S.C. 4411) limiting the amount of honoraria which can be accepted by a Federal employee.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

APPENDIX C—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

I. OFFICE OF THE SECRETARY OF TRANSPORTATION

Special Assistant to the Secretary
Regional Representative of the Secretary of Transportation
Special Assistant to the Deputy Secretary
Executive Assistant to the Deputy Secretary
Special Assistant to the Deputy Under Secretary
Assistant to the Deputy Under Secretary for Budget and Program Review
Executive Secretary
Deputy Executive Secretary
Special Assistant to Executive Secretary
Chairman, Contract Appeals Board
Member, Contract Appeals Board
Director, Office of Civil Rights
Equal Opportunity Specialist, GS-13/15, engaged in Contract Compliance Review
Director, Office of Planning and Program Review
Director, Office of Budget
Director, Office of Public Affairs
Deputy Director, Office of Budget
Assistant Director of for Communications Planning and Programming
Assistant Director for Communication Coordination
Assistant Director for Public Information
Director, Office of Deepwater Ports
Deputy Director, Office of Deepwater Ports
Deputy Director, Office of Planning and Program Review

OFFICE OF THE GENERAL COUNSEL

Deputy General Counsel
Assistant General Counsel
Special Assistant to the General Counsel
Special Assistant for Environmental Affairs
Patent Counsel
Chairman, Board of Correction of Military Records
Executive Secretary, Board of Correction of Military Records

OFFICE OF THE ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS

Deputy Assistant Secretary
Deputy Assistant Secretary for Policy and Program Development
Director Management Staff
Special Assistant to the Assistant Secretary
Director, Office of Transportation Systems Analysis and Information
Deputy Director, Office of Transportation Systems Analysis and Information
Director, Office of Transportation Planning
Director, Office of Transportation Economic Analysis
Deputy Director, Office of Transportation Economic Analysis
Chief, Industry and Financial Analysis
Director, Office of International Transportation Programs
Deputy Director, Office of International Transportation Programs
Chief, International Cooperation Division
Chief, Technical Assistance Division
Director, Transportation Energy Policy Staff
Director, Air Transportation Policy Staff
Deputy Director, Air Transportation Policy Staff
Director, Office of Transportation Regulatory Policy
Chief, Regulatory Coordination Division
Chief, Regulatory Rates Division
Chief, Regulatory Analysis Division

OFFICE OF THE ASSISTANT SECRETARY, ENVIRONMENT, SAFETY AND CONSUMER AFFAIRS

Deputy Assistant Secretary
Executive Officer
Director, Office of Safety Affairs
Deputy Director, Office of Safety Affairs
Assistant Director, for Pipeline Safety Policy
Assistant Director, of Hazardous Materials Safety Policy
Director, Office of Consumer Affairs
Director, Office of Transportation Security
Director, Office of Facilitation
Director, Office of Environmental Affairs

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

Deputy Assistant Secretary
Director, Office of Personnel and Training
Deputy Director, Office of Personnel and Training
Director, Office of Management Systems
Deputy Director, Office of Management Systems
Director, Office of Administrative Operations
Chief, Procurement Operations Division
Contract Specialist, GS-13/15
Chief, Publishing and Graphic Division
Printing Officer
Director, Office of Installations and Logistics
Deputy Director, Office of Installations and Logistics
Procurement Officer
Procurement Analyst, GS-13/15
Program Analyst
Supply Systems Analyst
Chief, Facilities Management Division
Policy and Programs Officer
Deputy Director, Office of Administrative Operations
Director, Office of Audits
Deputy Director, Office of Audits
Supervisory Auditor

Auditor, GS-13/15

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

Deputy Assistant Secretary
Special Assistant to the Assistant Secretary
Director, Office of Congressional Relations
Congressional Relations Officers, GS-13/15
Director, Office of Intergovernmental Affairs
Intergovernmental Liaison Officer
Community Assistance Coordinator

II. FEDERAL AVIATION ADMINISTRATION

Associate Administrators
Deputy Associate Administrators

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Chief, Program Review Staff

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT AND REVIEW

Aviation Policy Specialist

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR AIR TRAFFIC AND AIRWAY FACILITIES

Special Assistant
Chief, Program Management Staff
Program Analyst, GS-14/15

OFFICE OF CHIEF COUNSEL

Chief, Counsel
Deputy Chief Counsel
Assistant Chief Counsel
Special Assistant to the Chief Counsel
Special Counsel for Regulations
Deputy Assistant Chief Counsel
Branch Chiefs
Chief, Legislative Staff
Chief, Environmental Law Staff
Attorney Advisor, Procurement Legal Division, GS-13/15

OFFICE OF CIVIL RIGHTS

Director
Deputy Director
Civil Rights Specialist, GS-13 and above, engaged in Contract Compliance Review

OFFICE OF PUBLIC AFFAIRS

Assistant Administrator

OFFICE OF AVIATION SAFETY

Assistant Administrator

OFFICE OF GENERAL AVIATION

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION MEDICINE

Federal Air Surgeon
Deputy Federal Air Surgeon
Chief, Aeromedical Applications Division
Chief, Research Planning Branch

OFFICE OF INTERNATIONAL AVIATION AFFAIRS

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION POLICY

Director
Deputy Director
Chief, Policy Development Division
Chief, Policy Analysis Division
Financial Economist

OFFICE OF INVESTIGATIONS AND SECURITY

Director
Deputy Director
Chief, Investigations Division

OFFICE OF AVIATION SYSTEM PLANS

Director
Deputy Director
Chief, System Requirements Division
Chief, Plans Development Division
Chief, Planning Support Staff

OFFICE OF ENVIRONMENTAL QUALITY

Director
Deputy Director
Chief, Environmental Technical and Regulatory Division
Chief Evironmental Scientist

OFFICE OF MANAGEMENT SYSTEMS

Director
Deputy Director
Chief, Data Systems Division
Chief, Information and Statistics Division

OFFICE OF BUDGET

Director
Deputy Director

OFFICE OF SYSTEMS ENGINEERING MANAGEMENT

Director
Deputy Director
Chief, Advanced Concepts Staff
Chief, Systems Enginering Division
Chief, Technical Programs Division

AIR TRAFFIC SERVICE

Director
Deputy Director
Chief, ATC System Programs Division
Chief, Flight Services Division
Chief, Airspace and Air Traffic Rules Division
Chief, Automation Division
Chief, Airspace Obstruction and Airports Branch

AIRPORTS SERVICE

Director

Deputy Director
Chief and Assistant Chief, Development Programs Division
Chief and Assistant Chief, Airports Planning Division
Chief, Environmental Planning Branch
Chief, Planning Grant Branch
Airport Planning Specialists, GS-13/14
Civil Engineers, GS-13/14
Community Planners, GS-13/14
Chief, National System Planning Branch
Chief, Program Establishment Branch
Chief, Program Requirements Branch
Chief, Compliance and Property Conveyance Branch
Airport Programs Specialist, GS-13/14

AIRWAY FACILITIES SERVICE

Director
Deputy Director
Executive Officer
Technical Assistant to the Director
Division/Staff Chiefs and Assistant Division Chiefs
Supervisory Engineer
Program Analysis Officer
Technical Officer
Technical Officer Representative

CIVIL AVIATION SECURITY SERVICE

Director
Deputy Director
Executive Officer
Chief, Technical Security Division
Chief, Ground Operations Security Division
Chief, Air Operations Security Division
Chief, Operations Liaison Staff
Chief, Foreign Air Carrier Security Division

FLIGHT STANDARDS SERVICE

Director
Deputy Director
Chief, Engineering and Manufacturing Division
Chief, Air Carrier Division
Chief, General Aviation Division

LOGISTICS SERVICE

Director
Deputy Director
Chief and Assistant Chief, Contracts Division
Procurement Officer, GS-13 and above
Contract Price Analyst, GS-13 and above
Contract Specialist, GS-13 and above
Supervisory Contract Specialist
Supervisory Property Administration Specialist
Property Administration Specialist, GS-13 and above
Transportation Specialist, GS-13 and above
Industry Liaison Officer
Chief and Assistant Chief, Policy and Plans Division
General Supply Officer, GS-13 and above (Plans Branch)
Chairman, Contract Review Board
Chairman, Sole Source Board
Minority Small Business Coordinator
Chief and Assistant Chief, Material Management Division
Chief, Personal Property Management Branch
Program Analyst (Communications), GS-14
Communications Management Specialist, GS-13
Space, Property and Communications Officer, GS-13
Chief, Real Property and Space Management Branch
General Supply Specialist (Furniture Standards)
Chief and Assistant Chief, Industrial Division
Industrial Engineer, GS-14 and above
Industrial Specialist, GS-13 and above
Chief, Plans Branch
Procurement Analyst (Plans Branch)

SYSTEMS RESEARCH AND DEVELOPMENT SERVICE

Director
Deputy Director
Division Chiefs and Assistant Division Chiefs
Technical Advisor, ATC Systems Division
Chief, Program Management Staff
Assistant Chief, Program Management Staff
Chief, Special Program Staff, Aircraft Safety & Noise Abatement Division
Chief, Spectrum Analysis Branch, Analysis Division

METROPOLITAN WASHINGTON AIRPORTS

Director
Deputy Director
Airport Managers
Headquarters Staff Chiefs
Special Assistants
General Attorney
Chief, Contract/Property Management Branch (GS-12)
Chiefs, Operations and Safety Divisions
Chiefs and Assistant Chiefs, Engineering and Maintenance Division
Chiefs, Engineering Branches
Chief, Revenue Contract Branch (GS-12)
Chiefs and Assistant Chiefs, Financial Management Divisions
Chiefs, Property Management Branches (GS-12)
Contract Specialists and Negotiators, GS-13 and above
Operations and Safety Officers
Engineers and Architects, GS-13 and above
Chiefs, Budget and Administrative Branches
Chiefs, Financial Administration Branches

OFFICE OF PERSONNEL AND TRAINING

Director

Deputy Director

OFFICE OF LABOR RELATIONS

Director
Deputy Director

OFFICE OF ACCOUNTING AND AUDIT

Director
Deputy Director
Technical Assistant to the Director
Division Chiefs and Assistant Division Chefs
Supervisory Auditors

NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER

Director
Deputy Director
Executive Officer
Chief, Engineering Management Staff Center Counsel
Chief, Logistics Division
Chief, Contracts and Purchase Branch
Chief, Materiel branch
Chief, Audit Division
Chief, Air Traffic Systems Division
Chief, Systems Test Branch
Chief, Surveillance Systems Branch
Chief, Laboratory Management Branch
Chief, Systems and Engineering Equipment Branch
Chief, Simulation and Analysis Division
Chief, Analysis Branch
Chief, Systems Development Branch Electronics Engineer, GS-14
Chief, System Engineering Section
ATC Specialist R&D, GS-14
Chief, Communications and Guidance Division
Chief, Landing Branch
Chief, Communications and Navigation Branch
Chief, Aircraft and Airports Safety Division
Chief, Structures Branch
Chief, Propulsion and Fire Protection Branch
Chief, Instruments and Flight Test Branch
Chief, Airports Branch
Chief, Supporting Services Division
Chief, Aviation Facilities Division
Chief, Flight Operations Branch
Chief, investigations and Security Division

AERONAUTICAL CENTER

Director
Deputy Director
Executive Officer
Aeronautical Center Counsel
Chief, Operations Staff
Chief, Civil Rights Staff
Chief, Personnel Management Division
Chief, Accounting Division
Chief, Budget Division
Chief, Administrative Services Division
Chief, Plant Engineering Division
Chief, Procurement Division
Chief, Contracting Branch
Chief, Contract Management Branch
Chief, Procurement and Systems Branch
Chief, Electrical, Electronics and Realty Contracting Section
Chief, Aviation, Medical and Training Contracting Section
Chief, Electrical and Electronics Management Section
Chief, Aviation, Medical and Training Management Section
Chief, Audit Division
Chief, Investigations and Security Division
Chief, Civil Aeromedical Institute
Chief, Flight Standards Technical Division
Chief, Data Services Division
Chief, FAA Depot
Superintendent, FAA Management Training School
Chief, Aircraft Services Base
Superintendent, FAA Academy
Chief, Airways Engineering Support Division

REGIONS

Regional Director (Includes Assistant Administrators and Deputy Assistant Administrators for Europe, Africa and Middle East Regions)
Deputy Regional Director
Executive Officer
Area Managers, San Juan and Balboa
Resident Directors, Guam and Samoa
Supervisory Auditor
Procurement Officer/Specialist, GS-13 and above
Supply Management Officer/Specialist, GS-13 and above
Chief, Civil Rights Staff
Realty Supply Officer/Specialist, GS-13 and above
Realty Officer
Regional Counsel
Medical Officer
Chief, Accounting Division
Chief and Assistant Chief of an Air Traffic, Flight Standards, Airports, Airway Facilities Division
Chief, Air Transportation Security Division
Chief, Air Security Branch
Chief, Air Transportation Security Field Office
Principal Security Inspector (some GS-12's)
Chief and Assistant Chief, Logistics Division
Supervisory Contract Specialist
Chief and Assistant Chief of a General Aviation District Office, Air Carrier District Office, Flight Standards District Office, and Airports District Office
Principal Inspector, except at a Flight Inspection National Field Office, with a title such as Air Carrier Inspector, General Aviation Inspector, Air Carrier Operations Inspector, Aviation Operations Inspector, Aviation Safety Officer/Inspector, Airborne Instrument Specialist, Aviation

Maintenance Specialist, Aviation Electronic Specialist
Aviation Safety Inspector/Specialist (Manufacturing), GS-13 and above
Aerospace Engineer, GS-13 and above
Flight Test Pilot/Specialist, GS-13 and above

Justification for Inclusion of Positions in Appendix C Occupied by Incumbents Below GS-13

CHIEF, CONTRACT/PROPERTY MANAGEMENT BRANCH

(Supervisory Contract Administrator, WA-3456, GS-1102-12)

The incumbent of this position supervises the Contract Management Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Washington National Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Government operations at Washington National Airport.

CHIEF, REVENUE CONTRACT BRANCH

(Supervisory Contract Specialist, WA-3319, GS-1102-12)

The incumbent of this position supervises the Revenue Contract Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Dulles International Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Government operations at Dulles.

CHIEFS, PROPERTY MANAGEMENT BRANCHES

(General Supply Officer, WA-1291, GS-2001-12, Washington National Airport)

(General Supply Officer, WA-1291, GS-2001-12, Dulles International Airport)

The incumbents of these positions supervise the Property Management Branches of National and Dulles Airports. They are responsible for the procurement of equipment, supplies, materials, and services for the Airports. They are also responsible for the physical accountability of real as well as personal property at the Airports.

PRINCIPAL SECURITY INSPECTOR

(Security Specialist, NW-5250, GS-080-12)

The incumbent of this position serves as Principal Security Agent assigned to select air carriers and represent FAA on all aviation security matters involving these carriers. In this capacity, he plays a major role in approving the security programs of the carriers.

III. St. Lawrence Seaway Development Corporation

Assistant Administrator/Resident Manager
Assistant Administrator for Development
General Counsel
Comptroller
Director, Office of Procurement & Supply (GS-13)
Director, Office of Comprehensive Planning (GS-14)

IV. Urban Mass Transportation Administration

Special Assistant to the Administrator
Special Assistant to Deputy Administrator, Associate Administrator for Administration
Contract Price Analyst
Procurement Analyst
Financial Manager
Supervisory Auditor
Contract Specialist GS-13 and above
Auditor, GS-13/14
Management Analyst GS-13 and above
Accountants GS-13 and above
Budget/Analyst GS-13 and above
Director, Office of Administrative Services
Director, Office of Procurement and Third Party Contract Review
Chief Counsel
Assistant Chief Counsel
Attorney Advisor GS-13 and above
Director of Civil Rights
Equal Oportunity Specialist GS-13 and above
Associate Administrator for Policy and Program Development
Director, Office of Program Development
Director, Office of Program Evaluation
Director, Office of Policy Research
Associate Administator for Transit Assistance
Director, Office of Grants Assistance
Director, Office of Program Support
Director, Office of Program Analysis
Urban Mass Transportation Representative, GS-13 and above
General Engineers GS-13 and above
Mechanical Engineers GS-13 and above
Relocation Specialist GS-13 and above
Transit Operations Specialist GS-13
Program Analyst GS-13 and above
Associate Administrator for Research and Development
Director, Office of Bus and Paratransit Technology
Director, Office of Rail Technology
Director, Office of Safety and Product Qualification
Director, Office of New Systems and Automation
Electrical Engineer GS-13 and above

Electronic Engineer GS-13 and above
Safety Engineer GS-14 and above
Operations Research Analyst GS-13 and above
Director AGT Applications Division
Director UMTA Programs—High Speed
Ground Test Center—Pueblo, Colorado
Associate Administrator for Transportation Management and Demonstrations
Transit Industry Liaison GS-15
Director, Office of Transit Management
Director, Office of Services Methods Demonstrations
Transportation Project Manager GS-13 and above
Community Planners GS-13 and above
Regional Directors and Chiefs

V. FEDERAL HIGHWAY ADMINISTRATION

Executive Director

OFFICE OF THE CHIEF COUNSEL

Chief Counsel
Deputy Chief Counsel
Assistant Chief Counsel

OFFICE OF PROGRAM REVIEW AND INVESTIGATIONS

Director

OFFICE OF CIVIL RIGHTS

Director
Chief, Contract Compliance Division
Civil Rights Specialist, GS-13/14, engaged in Contract Compliance Review

NATIONAL HIGHWAY INSTITUTE

Director
State Programs Officer
Assistant State Programs Officer
Federal Programs Officer
Assistant Federal Programs Officer
University and Industry Programs Officer
Assistant University and Industry Programs Officer

ASSOCIATE ADMINISTRATION FOR PLANNING

Associate Administrator
Director, Office of Program and Policy Planning
Chief, Transportation Economics Division
Chief, Policy Planning Division
Chief, Program Coordination Division
Director, Office of Highway Planning
Chief, Program Management Division
Chief, Urban Planning Division

ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Program Coordinator
Director, Office of Research
Director, Office of Development
Chief, Program Analysis Staff
Chief, Structures & Applied Mechanics Division
Deputy Chief, Structures & Applied Mechanics Division
Chief, Bridge Structures Group
Chief, Protective Systems Group
Chief, Pavement Systems Group
Chief, Materials Division
Deputy Chief, Materials Division
Chief, Soils & Exploratory Techniques Group
Chief, Paving and Structure Materials Group
Chief, Chemistry & Coatings Group
Chief, Traffic Systems Division
Deputy Chief, Traffic Systems Division
Chief, Analysis and Experimentation Group
Chief, Systems Development & Technology Group
Chief, Systems Requirements & Evaluation Group
Chief, Environmental Design and Control Division
Deputy Chief, Environmental Design & Control Division
Chief, Socio-Economic & Environment Group
Chief, Environmental Control Group
Chief, Engineering Services Division
Chief, Electronic Instrumentation Group
Chief, Computer Technology Group
Chief, Mechanical Design & Experimentation Fabrication Group
Chief, Implementation Division
Deputy Chief, Implementation Division
Chief, Engineering Location & Design Group
Chief, Construction, Materials and Methods Group

ASSOCIATE ADMINISTRATOR FOR RIGHT-OF-WAY AND ENVIRONMENT

Associate Administrator
Director, Office of Environmental Policy
Chief, Environmental Programs Division
Chief, Environmental Quality Division
Director, Office of Right-of-Way
Chief, Real Property Acquisition Division
Chief, Relocation Assistance Division

ASSOCIATE ADMINISTRATOR FOR ENGINEERING AND TRAFFIC OPERATIONS

Associate Administrator
Director, Office of Highway Operations
Chief, Federal Highway Projects Division
Chief, Foreign Projects Division
Chief, Construction and Maintenance Division
Highway Engineer, GS-15, Construction and Maintenance Division
Chief, Defense Plans and Operations Division
Director, Office of Traffic Operations
Chief, Traffic Performance and Analysis Division

Director, Office of Engineering
Chief, Federal-Aid Division
Chief, Highway Design Division
Chief, Bridge Division
Highway Engineer, GS-15, Divisions in Office of Engineering

ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS AND HIGHWAY SAFETY

Associate Administrator
Director, Office of Highway Safety
Chief, Program Management Division
Chief, Technical Development and Standards Division
Director, Bureau of Motor Carrier Safety
Deputy Director, Bureau of Motor Carrier Safety
Chief, Regulations Division
Chief, Compliance Division
Deputy Chief, Compliance Division
Chief, Accident Analysis Division

ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Deputy Associate Administrator
Chief, Operations and Services Division
Director, Office of Contracts and Procurement
Chief, Procurement Management Support Division
Chief, Services Procurement Division
Chief, Contract Administration Division
Senior Procurement Analyst
Supervisory Contract and Procurement Specialist, GS-13/14

FIELD INSTALLATIONS

Regional Federal Highway Administrator or Regional Engineer
Deputy Regional Federal Highway Administrator
Director, Office of Federal Highway Projects
Deputy Director, Office of Federal Highway Projects
Chief, Construction Division or Director, Office of Construction and Maintenance
Regional Civil Rights Officer, GS-14
Civil Rights Specialist, GS-13
Regional Audit Manager
Auditor-in-Charge or Assistant Regional Audit Manager for (State)
Division Administrator
Director, Motor Carrier Safety Office
Regional Hazardous Materials Officer
Regional Accident Investigator
Motor Carrier Safety Investigator

VI. FEDERAL RAILROAD ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Deputy Administrator
Special Assistant to the Administrator, GS-13 and above
Director, Special Projects Staff
Executive Director, Minority Business Resource Center
Civil Rights Officer
Public Affairs Officer

OFFICE OF PLANNING AND BUDGET DEVELOPMENT

Director
Chief, Budget Development Division
Chief, Planning Division
Chief, Program Review Division

OFFICE OF ADMINISTRATION

Associate Administrator
Director, Office of Procurement
Supervisory Contract Specialist, GS-14 and above
Contract Specialist, GS-13
Director, Office of Management Systems
Director, Office of Financial and Administrative Services
Director, Office of Personnel and Training
Auditor

OFFICE OF CHIEF COUNSEL

Chief Counsel
Deputy Chief Counsel
Assistant Chief Counsel, Safety Regulation Division
Assistant Chief Counsel, Enforcement Division
Assistant Chief Counsel, General Law Division
Assistant Chief Counsel, Freight Economics and Finance Division
Assistant Chief Counsel, Intercity Passenger Programs Division

OFFICE OF FEDERAL ASSISTANCE

Associate Administrator
Financial Analyst GS-15
Director, Office of National Freight Assistance Programs
Director, Office of State Assistance Programs
Chief, State Planning Assistance Division
Chief, Financial Analysis and Administration Division
Chief, State Programs Division
Chief, Special Programs Division
Chief, Rail Passenger Programs Division

NORTHEAST CORRIDOR PROJECT

Director
Deputy Director
Associate Directors
Chief, Operations Staff
Chief, Project Control Division
Chief, Planning and Analysis Division
Chief, Design Division
Chief, Construction Division
Chief, Systems Engineering Division
Program Manager, Philadelphia

OFFICE OF RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Freight Systems
Director, Office of Passenger Systems
Director, Office of Rail Safety Research

OFFICE OF POLICY AND PROGRAM DEVELOPMENT

Associate Administrator
Deputy Associate Administrator
Director, Office of Capital Policy and Planning
Director, Office of Systems Analysis and Information
Director, Office of Economics and Operations Policy

OFFICE OF SAFETY

Associate Administrator
Deputy Associate Administrator
Director, Office of Safety Programs
Director, Office of Standards Procedures

REGIONAL OFFICES

Regional Administrators
Directors of Railroad Safety
Directors of Federal Assistance
Supervisory Railroad Safety Inspectors
Railroad Safety Inspection Specialists
Railroad Safety Inspectors, GS-11/12

TRANSPORTATION TEST CENTER

Director
Chief, Facility Management Division
Contract Specialist

ALASKA RAILROAD

General Manager
Assistant General Manager
Chief, Administration Division
Real Estate Officer
Chief, Contracts and Procurement
Chief Counsel
Traffic Officer
Operations Officer
Assistant Operations Officer—(Northern Region)
Chief Engineer
Assistant Chief Engineer
Chief Mechanical Officer
General Mechanical Foreman—(Fairbanks)
Transportation Officer
Chief, Budget and Accounting
Supply Officer
Chief, Data Processing
General Attorney
Freight Agent, Anchorage

VII. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Director, Office of Civil Rights
Equal Opportunity Specialist, GS-13 and above, engaged in Contract Administration
Chief Counsel
Attorney-Advisor, all grade levels

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR MOTOR VEHICLE PROGRAMS

Associate Administrator
Director, Engineering Test Facility
Chief, Project Engineering Division
Chief, Testing Operations Division
Director, Engineering Systems Staff Cost and Lead-Time Engineer and Cost and Lead-Time Analyst
Director, Office of Standards Enforcement
Chief, Validation Division
Chief, Verification Division
All other Office of Standards Enforcement professional personnel, regardless of grade level
Director, Office of Crash Avoidance
Chief, Driver Environment Division
Chief, Handling and Stability Division
Chief, Tire Division
All other Office of Crash Avoidance professional personnel, GS-13 and above
Director, Office of Crashworthiness
Chief, Standards Engineering Division
Chief, Standards Preparation Division
Chief, Automobile Ratings Division
All other Office of Crashworthiness professional personnel, GS-13 and above
Director, Office of Defects Investigation
All other Office of Defects Investigation professional personnel
Any other employees, regardless of grade, designated in MVP to serve as Contract Technical Managers and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS

Associate Administrator
Director, Office of Driver and Pedestrian Programs
    Chief, Program and Demonstration Management Division
    Chief, Demonstrations Branch
    Chief, Program Definition Branch
    Chief, Demonstration Evaluation Division
    Chief, Enforcement and Emergency Services Division
    Chief, Emergency Medical Services branch
    Chief, Police Traffic Services Branch
    Chief, Driver and Pedestrian Education Division
    Chief, Driver Programs Branch
    Chief, Pedestrian and Cyclist Branch
    Chief, Safety Belt Usage Branch
    Chief, Driver Licensing and Adjudication Division
    Chief, Licensing and Regulation Branch
    Chief, Adjudication Branch
    Chief, Driver Register Branch

Director, Office of State Program Assistance
Chief, Program Management Division
Chief, Manpower Development Division
Chief, Program Review and Analysis Division
Chief, Information and Records Systems Division
Director, Office of State Vehicle Programs
Chief, Engineering and Demonstrations Division
Chief, Vehicles-in-Use Standards Branch
Chief, State Program Division
All other Office of State Vehicle Programs professional personnel, GS-13 and above
Any other employees, regardless of grade designated in TSP to serve as Contract technical Managers and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Vehicle Safety Research
Chief, Crash Avoidance Reserch Division
Chief, Structures Research Division
Director, Safety Research Laboratory
Chief, Braking Systems Division
Chief, Occupant Restraint Systems Division
Chief, Tire Systems Division
Director, Office of Statistics and Analysis, Chief, Mathematical Analysis Division, Chief, Accident Investigation Division, Chief, Statistical Programs Division
Director, Office of Driver and Pedestrian Research
Any other employees, regardless of grade, designated in R&D to serve as Contract Technical Managers, and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR PLANNING AND EVALUATION

Associate Administrator
Director, Office of Program Planning
Director, Office of Program Evaluation
Any other employees, regardless of grade, designatd in P&E to serve as Contract Technical Managers, and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Director, Office of Contracts and Procurement
Contract Specialist, GS-13, 14
Director, Office of Financial Management
Director, Office of Management Services, Chief, Technical Services Division, Chief, General Services Division
Any other employees, regardless of grade, designated in ADMIN to serve as Contract Technical Managers, and supervisors of such employees
Any other employees regardless of grade that designates the contractor to perform graphics or other art work

REGIONAL OFFICES

Regional Administrators
Any other NHTSA employees, regardless of grade, designated to serve as a Contract Technical Manager, and supervisors of such employees

VIII. UNITED STATES COAST GUARD

Commandant
Vice Commandant
Chief of Staff
Deputy Chief of Staff
Comptroller
Deputy Comptroller
Chief, Procurement Division
Chief, Administrative and Review Branch
Chief, Quality Assurance Division
Supervisory Contract Specialist, GS-13 and above
Contract Specialist, GS-13 and above
Chief, Office of Operations
Deputy Chief Office of Engineering
Chief Counsel
Deputy Chief Counsel
Chief, Claims and Litigation Division, Office of Chief Counsel
Chief, Procurement Law Division, Office of Chief Counsel
Chief, Office of Merchant Marine Safety
Deputy Chief, Office of Merchant Marine Safety
Chief, Merchant Vessel Documentation Division
Chief, Merchant Marine Technical Division
Chief, Merchant Vessel Inspection Division
Assistant Chief, Merchant Vessel Inspection division
Chief, Merchant Vessel Personnel Division Traveling Inspector, Office of Merchant Marine Safety
Chief, Cargo & Hazardous Materials Division
Assistant Chief, Cargo & Hazardous Materials Division
Chief, Office of Research and Development
Deputy Chief, Office of Research and Development
Chief Scientist
Chief, Office of Boating Safety
Deputy Chief, Office of Boating Safety
Chief, Boating Technical Division
Chief, State Liaison and Compliance Division, Office of Boating Safety
Commander, US Coast Guard Districts
Officer in Charge, Marine Inspection Office
Captain of the Port
Director, Great Lakes Pilotage Staff
Chief, Office of Civil Rights
Deputy Chief, Office of Civil Rights

Equal Opportunity Specialist (Employment), GS-13, Office of Civil Rights
Civil Rights Specialist, GS-13 and above, engaged in Contract Compliance Review
Chief, Office of Marine Environment and Systems
Deputy Chief, Office of Marine Environment and Systems
Chief, Bridge Division
Assistant Chief, Bridge Division
Project Manager, Deepwater Ports Project
Assistant Project Manager, Deepwater Ports Project
Chief, Marine Environmental Protection Division
Assistant Chief Marine Environmental Protection Division
Chief, Port Safety & Law Enforcement Division
Assistant Chief, Port Safety & Law Enforcement Division
District Chiefs of Staff
District Chiefs, Boating Safety Division
District Chiefs, Engineering Division
District Chiefs, Naval Engineering Branch
District Comptrollers
District Chiefs, Marine Safety Branch
Commanding Officer, Marine Safety Office

IX. RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Administrator
Deputy Administrator
Executive Officer
Executive Secretary
Special Assistant

OFFICE OF THE CHIEF COUNSEL

Chief Counsel

OFFICE OF POLICY, PLANS, AND ADMINISTRATION

Director
Chief, Administration Division
Chief, Resources Management Division
Chief, Policy and Plans Division
Chief, Procurement Branch
Contract Specialist, GS-13 and above

TRANSPORTATION SYSTEMS CENTER

Director
Deputy Director
Executive Assistant
Equal Opportunity Officer
Chief Counsel
Patent Advisor
Chief, Office of Plans and Programs
Chief, Office of Advanced Systems
Director, Office of Systems Research and Analysis
Chief, National Transportation Research Division
Chief, Transportation Information Division
Chief, Urban and Regional Research Division
Director, Office of Energy and Environment
Chief, Energy Programs Division
Chief, Environmental and Test Programs Divison
Director, Office of Air and Marine Systems
Chief, Systems Development Division
Chief, Systems Technology Division
Director, Office of Ground Systems
Deputy Director, Office of Ground Systems
Chief, Urban Systems Division
Chief, Intercity Systems Division
Chief, Vehicles and Engineering Division
Director, Office of Administration
Chief, Budget Office
Chief, Management Systems Division
Chief, Procurement and Supply Division
Chief, Procurement Analysis Branch
Chief, Contracts Branch
Chief, Purchases Branch
Contract Specialist, GS-13 and above
Contract Price Analyst, GS-13 and above
Chief, Computer Services Division

TRANSPORTATION PROGRAMS BUREAU

Director
Director, Office of Transportation Security
Deputy Director, Office of Transportation Security
Director, Office of Systems Engineering
Chief, Navigation and Communications Division
Chief, Advanced Technology Division
Director, Office of Emergency Transportation
Deputy Director, Office of Emergency Transportation
Director, Office of Facilitation
Deputy Director, Office of Facilitation
Director, Office of University Research
Deputy Director, Office of University Research
Director, Transportation Safety Institute

MATERIALS TRANSPORTATION BUREAU

Director
Associate Director for Operations and Enforcement
Chief, Operations Division
Chief, Hazardous Materials Enforcement Division
Chief, Pipeline Safety Enforcement Division
Chief, MTB Eastern Region Office
Chief, MTB Southern Region Office
Chief, MTB Central Region Office
Chief, MTB Southwest Region Office
Chief, MTB Western Region Office
Associate Director for Hazardous Materials Regulation
Chief, Standards Division
Chief, Technical Division
Associate Director for Pipeline Safety Regulation
Chief, Standards Division
Chief, Technical Division
Assistant Director for Program Support
Chief, Program Development Division

Chief, R&D Management Division
Chief, Information Services Division
Associate Director for Alaska Pipeline
Chief, Specification Control Division
Chief, Engineering Design Review Division

[Amdt. No. 99-10, 42 FR 3119, Jan 14, 1977, 42 FR 5359, Jan 28, 1977, as amended by 42 FR 8144, Feb. 9, 1977; Amdt. 99-11, 42 FR 24280, May 13, 1977; Amdt. 99-12, 42 FR 39220, Aug. 3, 1977; Amdt.99-13, 43 FR 54251, Nov. 21, 1978; 44 FR 9755, Feb. 15, 1979]

APPENDIX D—EXTRACT FROM APPENDIX C OF CIVIL SERVICE FEDERAL PERSONNEL MANUAL SYSTEM ON SPECIAL GOVERNMENT EMPLOYEES (INCLUDING GUIDELINES FOR OBTAINING AND UTILIZING THE SERVICES OF SPECIAL GOVERNMENT EMPLOYEES)

Each department and agency should observe the following rules in obtaining and utilizing the services of a consultant, adviser, or other temporary or intermittent employee:

(a) At the time of his original appointment and the time of each appointment thereafter, the department or agency should make its best estimate of the number of days during the following 365 days on which it will require the services of the appointee. A part of a day should be counted as a full day for the purposes of this estimate, and a Saturday, Sunday, or holiday on which duty is to be performed should be counted equally with a regular work day.

(b) Unless otherwise provided by law, an appointment should not extend for more than 365 days. When an appointment extends beyond that period, an estimate as required by paragraph (a) should be made at the inception of the appointment and a new estimate at the expiration of each 365 days thereafter.

(c) If a department or agency estimates, pursuant to paragraph (a) or (b), that an appointee will serve more than 130 days during the ensuing 365 days, the appointee should not be carried on the rolls as a special Government employee and the department or agency should instruct him that he is regarded as subject to the prohibitions of 18 U.S.C. 203 and 205 to the same extent as if he were to serve as a full-time employee. If the estimate is that he will serve no more than 130 days during the following 365 days, he should be carried on the rolls of the department or agency as a special Government employee and instructed that he is regarded as subject only to the restrictions of 18 U.S.C. 203 and 205. Even if it becomes apparent, prior to the end of a period of 365 days for which a department or agency has made an estimate on an appointee, that he has not been accurately classified, he should nevertheless continue to be considered a special Government employee or not, as the case may be, for the remainder of that 365-day period.

(d) An employee who undertakes service with two departments or agencies shall inform each of his arrangements with the other. If both his appointments are made on the same date, the aggregate of the estimates made by the departments or agencies under paragraph (a) or (b) shall be considered determinative of his classification by each. Notwithstanding anything to the contrary in paragraphs (a), (b), or (c), if after being employed by one department or agency, a special Government employee is appointed by a second to serve it in the same capacity, each department or agency should make an estimate of the amount of his service to it for the remaining portion of the 365-day period covered by the original estimate of the first. The sum of the two estimates and of the actual number of days of his service to the first department or agency during the prior portion of such 365-day period shall be considered determinative of the classification of the appointee by each during the remaining portion. If an employee undertakes to serve more than two departments or agencies, they shall classify him in a manner similar to that prescribed in this paragraph for two agencies. Each agency which employs special Government employees who serve other agencies shall designate an officer to coordinate the classification of such employees with such other agencies.

(e) When a person is serving as a member of an advisory committee, board or other group, and is by virtue of his membership thereon an officer or employee of the United States, the requirements of paragraphs (a), (b), (c), and (d) should be carried out to the same extent as if he were serving the sponsoring department or agency separately and individually.

(f) The 60-day standard affecting a special Government employee's private activities before his department or agency is a standard of actual past service, as contrasted with the 130-day standard of estimated future service discussed above. A special Government employee is barred from representing another person before his department or agency at times when he has served it for an aggregate of more than 60 days during the past 365 days. Thus, although once having been in effect, the statutory bar may be lifted later by reason of an intervening period of nonservice. In other words, as a matter of law the bar may fluctuate in its effect during the course of a special Government employee's relationship with his department or agency.

(g) A part of a day should be counted as a full day in connection with the 60-day standard discussed in paragraph (f), above, and a Saturday, Sunday, or holiday on which duty has been performed should be counted equally with a regular work day. Service performed by a special Government employee in one department or agency should not be counted by another in connection with the 60-day standard.

To a considerable extent the prohibitions of 18 U.S.C. 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, it is desirable that a consultant or adviser or other individual who is a special Government employee, even when not compelled to do so by 18 U.S.C. 203 and 205, should make every effort in his private work to avoid any personal contact in negotiations for contracts or grants with the department or agency which he is serving if the subject matter is related to the subject matter of his consultancy or other service. It is recognized that this will not always be possible to achieve; for example, in a situation in which a consultant or adviser has an executive position and responsibility with his regular employer which requires him to participate personally in contract negotiations with the department or agency he is advising. When this situation occurs, the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible Government official. In other instances an occasional consultant or adviser may have technical knowledge which is indispensable to his regular employer in his efforts to formulate a research and development contract or a research grant and, for the same reason, it is in the interest of the Government that he should take part in negotiations for his private employer. Again, he should participate only with the knowledge of a responsible Government official.

Section 205 of title 18 contains an exemptive provision dealing with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he otherwise would be disqualified because he had participated in the matter for the Government or it is pending in an agency he has served for more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either 18 U.S.C. 203 or 205, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the department or agency head must first make a certification in writing, published in the FEDERAL REGISTER, that it is required by the national interest.

It is necessary occasionally to distinguish between consultants and advisers who are special Government employees and persons who are invited to appear at a department or agency in a representative capacity to speak for firms or an industry, or for labor or agriculture, or for any other recognizable group of persons, including, on occasion, the public at large. A consultant or adviser whose advice is obtained by a department or agency from time to time because of his individual qualifications and who serves in an independent capacity is an officer or employee of the Government. On the other hand, one who is requested to appear before a Government department or agency to present the views of a nongovernmental organization or group which he represents, or for which he is in a position to speak, does not act as a servant of the Government and is not its officer or employee. He is therefore not subject to the conflict of interest laws and is not within the scope of this chapter.

The following principles are useful in arriving at a determination whether an individual is acting before an agency in a representative capacity:

(1) A person who receives compensation from the Government for his services as an adviser or consultant is its employee and not a representative of an outside group. The Government's payment of travel expenses and a per diem allowance, however, does not by itself make the recipient an employee.

(2) It is rare that a consultant or adviser who serves alone is acting in a representative capacity. Those who have representative roles are for the most part persons serving as members of an advisory committee or similar body utilized by a Government agency. It does not follow, however, that the members of every such body are acting as representatives and are therefore outside the range of the conflict of interest laws. This result is limited to the members of committees utilized to obtain the views of nongovernmental groups or organizations.

(3) The fact that an individual is appointed by an agency to an advisory committee upon the recommendation of an outside group or organization tends to support the conclusion that he has a representative function.

(4) Although members of a governmental advisory body who are expected to bind outside organizations are no doubt serving in a representative capacity, the absence of au-

thority to bind outside groups does not require the conclusion that the members are Government employees. What is important is whether they function as spokesmen for nongovernmental groups or organizations and not whether they can formally commit them.

(5) When an adviser or consultant is in a position to act as a spokesman for the United States or a Government agency—as, for example, in an international conference—he is obviously acting as an officer or employee of the Government.

While it would be highly desirable, in order to minimize the occurrence of conflicts of interests, for departments and agencies of the Government to avoid appointing to advisory positions individuals who are employed or consulted by contractors or others having a substantial amount of business with that department or agency, it is recognized that the Government has, of necessity, become increasingly concerned with highly technical areas of specialization and that the number of individuals expert in those areas is frequently very small. Therefore, in many instances it will not be possible for a department or agency to obtain the services of a competent adviser or consultant who is not in fact employed or consulted by such contractors. In addition, an advisory group may of necessity be composed largely or wholly of persons of a common class or group whose employers may benefit from the advice given. An example would be a group of university scientists advising on research grants to universities. Only in such a group can the necessary expertise be found. In all these circumstances, particular care should be exercised to exclude his employer's or clients' contracts or other transactions with the Government from the range of the consultant's or adviser's duties.

APPENDIX E—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES

§ 207 *Disqualification of former officers and employees in matters connected with former duties or offical responsibilities; disqualification of partners.*

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility:

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility:

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section. (Added Pub. L. 87-349, section 1(a), Oct. 23, 1962, 76 Stat. 1123.)

§ 203 *Acts affecting a personal financial interest.*

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest:

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. (Added Pub. L. 87-849, section 1(a), Oct. 23, 1962, 76 Stat. 1124.)

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the Federal Register.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

Appendix to Subtitle A—United States Railway Association—Employee Responsibilities and Conduct

SUBPART A—GENERAL

Sec.
1 Purpose and policy.
3 Definitions.
5 Applicability.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

7 General.
9 Gifts, entertainment, and favors.
11 Outside employment and other activities.
13 Financial interests.
15 Conflicts of interest.
17 Disqualification arising from personal financial interests.
19 Use of Association property or official title.
21 Misuse of information.
23 Indebtedness.
25 Miscellaneous provisions.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

31 Employees required to submit statement.
33 Time and place for submission of employee statements.
35 Supplementary statements.
37 Committee on Commerce, information not known by employee.
39 Information not required.
41 Confidentiality of employee's statement.
43 Interpretation and advisory service.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

51 Matters in which employee participated personally and substantially.
53 Matters under employee's official responsibility.
55 Employee with outstanding scientific or technological qualifications.
57 Partner of employee.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(A), 15, AND 17(A)
APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS, UNDER SECTION 31 [Reserved]

AUTHORITY: Sec. 202(a)(5)(2) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236).

SOURCE: 39 FR 3825, Jan. 30, 1974.

SUBPART A—GENERAL

SECTION 1. *Purpose and policy.* (a) These regulations implement Pub. L. 93-236, The Regional Rail Reorganization Act of 1973. They prescribe standards of ethical and other conduct, and reporting requirements, for employees of the United States Railway Association (the Association). The standards and requirements are appropriate to the particular functions and activities of the Association.

(b) The absence of a specific published standard of conduct covering an act tending to discredit an employee of the Association does not mean that the act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

(c) Personnel of the Association shall observe standards of conduct that will reflect credit on the Association.

SEC. 3. *Definitions.* Unless the context requires otherwise, the following definitions apply in these regulations:

"Association" means the United States Railway Association established by Pub. L. 93-236.

"Chairman" means the Chairman of the Board of Directors of the Association.

"Employee" means an officer or employee of the Association.

"General Counsel" means the General Counsel of the Association, or his designee.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed, and the words "a person may not * * *" mean that a person is not required, authorized, or permitted to do the act prescribed.

"Shall" is used in an imperative sense.

SEC. 5. *Applicability.* These regulations apply to each employee of the Association.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

SEC. 7. *General.* (a) Each employee shall avoid any action, whether or not specifically prohibited by these regulations, which might result in or create the appearance of:

(1) Using his Association office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding the efficiency or economy of the Association;

(4) Losing complete independence or impartiality;

(5) Making an Association decision outside of official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Association.

(b) An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the integrity of the Association.

SEC. 9. *Gifts, entertainment, and favors.* (a) Except as provided in paragraphs (b) and (c) of this section, an employee may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Association.

(2) Has interests which may be substantially affected by the performance or nonperformance of that employee's official duties.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour if the employee is properly in attendance;

(3) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value; or

(4) Accept an invitation addressed to the Association, when approved by the General Counsel, to participate in an inaugural trip or similar ceremonial event related to transportation, and accept food, lodging, and entertainment incident thereto.

(c) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, retirement, or transfer.

SEC. 11. *Outside employment and other activities.* (a) An employee may not engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of his employment with the Association. Incompatible activities include:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; and

(2) Outside employment which tends to impair his mental or physical capacity to perform his duties and responsibilities of his employment with the Association in an acceptable manner.

(b) An employee may not receive any salary or anything of monetary value from a private source as compensation for his services to the Association.

(c) This section does not preclude an employee from participating in the affairs of, or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, or fraternal organization, a nonprofit educational or recreational organization, or a public service or civic organization.

SEC. 13. *Financial interests.* (a) Except where authorized by statute or these regulations, an employee may not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Association duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in section 17 apply.

(b) The fact that an employee is on leave of absence from employment with or has served as an attorney or consultant to, a railroad, or a company engaged in the manufacture, construction, or supply of railroad facilities and equipment, or a creditor of a railroad, shall not, of itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. This provision does not affect the obligation of such an employee to submit a statement of employment and financial interest as required by section 31(a)(1).

(c) The fact that an employee owns shares of stock, corporate bonds, or other corporate securities in any single railroad, or a company engaged in the manufacture, construction or supply of railroad facilities and equipment, or a creditor of a railroad, having a current aggregate market value of $10,000 or more, or an option to purchase such securities, shall not, in itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. Such ownership must, however, be reported in a special statement of financial interest, in a manner specified by the General Counsel, which shall be available for public inspection.

SEC. 15. *Conflicts of interest.* (a) Except where specifically exempted by statute or these regulations, a conflict of interest exists whenever the performance of the duties of an employee has or appears to have a direct and predictable effect upon a financial interest of such employee or of his spouse, minor child, partner, or person or organization with which he is associated or is negotiating for future employment.

(b) A conflict of interest exists even though there is no reason to suppose that the employee will, in fact, resolve the conflict to his own personal advantage rather than to that of the Association.

Sec. 17. *Disqualification arising from personal financial interests.* (a) Except as stated in paragraph (e) of this section, or except as permitted by statute, an employee may not participate personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter in which, to his knowledge, he, his spouse, minor child, a blood relative who is a resident of the employee's household, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless he shall cause the financial interest involved to be divested, or request a determination of the propriety of his participation in any matter by informing the General Counsel of the nature and circumstances of the matter and financial interest involved.

(b) After examining the information submitted the General Counsel may:

(1) Relieve the employee from participation in the matter and, if possible, reassign it to another employee who is not subordinate to the relieved employee;

(2) Approve the employee's participation upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services the Association may expect from the employee;

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(c) In any case in which the General Counsel has reason to believe that an employee may have an interest that would be disqualifying under this section, he shall discuss the matter with the employee. If he finds that the interest exists, he may take any of the actions stated in paragraph (b) of this section.

(d) In any case in which the employee is dissatisfied with the General Counsel's decision, the employee may appeal the matter to the Chairman of the Association for reconsideration and final determination of the appropriate action.

(e) Information concerning categories of financial interests which are exempted from the prohibitions of §§ 13(a), 15, and paragraph (a) of this section as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix 1.

Sec. 19. *Use of Association property or official title.* (a) An employee may not, directly or indirectly, use or allow the use of Association property of any kind, including property leased to the Association, for other than an officially approved activity. Each employee has a positive duty to protect and conserve Association property, including equipment, supplies, and other property entrusted or issued to him.

(b) An employee may not, directly or indirectly, use or allow the use of his title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

Sec. 21. *Misuse of information.* An employee may not, for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with his Association employment, if that information has not been made available by the Association to the general public.

Sec. 23. *Indebtedness.* Each employee shall pay his just financial obligations in a proper and timely manner, especially those imposed by law such as Federal, State, or local taxes. For the purposes of this section "just financial obligations" means those that are recognized as such by the employee or reduced to a judgment by a court, and "in a proper and timely manner" means in a manner which the Association determines does not, under the circumstances, reflect adversely on the Association as his employer. The Association will not determine the validity or amount of a disputed debt and will not initiate action to collect such debts.

Sec. 25. *Miscellaneous provisions.* (a) Each employee shall acquaint himself with these regulations which relate to his ethical and other conduct as an employee of the Association.

(b) In the appointment of personnel and in assignment of their duties, the President of the Association shall take steps to avoid, to as great an extent as possible, any conflict between the Association duties and the private interests of such personnel.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

Sec. 31. *Employees required to submit statement.* (a) Each of the following employees shall submit a statement of employment and financial interest on a form provided by the Association:

(1) Each employee who within the preceding two years was employed by or served as an attorney or consultant to, a railroad or a company significantly engaged in the manufacture, construction or supply of railroad facilities and equipment, including, but not limited to, rolling stock, terminal facilities,

signal equipment, track and road bed, and electrical and communication transmission equipment. The General Counsel shall decide, in a doubtful case, whether the relationship to the railroad industry is sufficiently significant as to require submission of a statement of employment and financial interest.

(2) Each employee who is in a position identified in Appendix 2.

(b) Any employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed by the General Counsel.

(c) Any employee in a position which meets the criteria in paragraph (a) of this section may be excluded from the reporting requirements of this section if the General Counsel determines that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review and the remote or inconsequential effect on the integrity of the Association.

SEC. 33. *Time and place for submission of employee statements.* Each employee who is subject to the reporting requirements of sec. 31 shall submit his employment and financial interest statement to the General Counsel within 30 days after entering the employ of the Association.

SEC. 35. *Supplementary statements.* (a) Each employee shall, not later than July 31 of each year, file a supplementary statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employment and financial interest. If changes or additions have not occurred, a negative report is required.

(b) Compliance with the reporting requirements of this Subpart is not an alternative to observance of the conflict-of-interest provisions of Subpart B of these regulations, but is to facilitate uniform compliance with, and the orderly administration of Subpart B.

SEC. 37. Committee on Commerce, *Information not known by employee.* If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his behalf, and the employee shall so notify the General Counsel.

SEC. 39. *Information not required.* An employee is not required to submit on a statement of employment and financial interest or supplementary statement any information relating to his connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purposes of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Association are considered to be "business enterprises" and are required to be included in the employee's statement of employment and financial interest.

SEC. 41. *Confidentiality of employee's statement.* (a) Except for special statements of financial interest required by sec. 13(c) each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials and others who receive statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of these regulations. Information may not be disclosed to any person outside the Association, except as the General Counsel may determine for good cause shown. No disclosure permitted by this paragraph may be made unless the affected employee has been notified that disclosure is contemplated, and the employee is given an opportunity to present reasons and arguments to maintain the confidentiality of the statement.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in the records of the Association.

SEC. 43. *Interpretation and advisory service.* The General Counsel shall provide authoritative counseling and interpretations to employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by these regulations.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

SEC. 51. *Matters in which employee participated personally and substantially.* Except as permitted by sec. 55 hereof, an employee of the Association, after his employment has ceased, may not act as agent or attorney for anyone other than the Association in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or has a direct and substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

SEC. 53. *Matters under employee's official responsibility.* Except as permitted by sec. 55 hereof, an employee of the Association may not, within one year after his employment has ceased, appear personally before the Association or any court or department or agency of the Government as agent, or attorney, for anyone other than the Association in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Association at any time within a period of one year prior to the termination of such responsibility.

SEC. 55. *Employee with outstanding scientific or technological qualifications.* A former employee with outstanding scientific or technological qualifications may act as attorney or agent or appear personally in connection with a particular matter in a scientific or technological field if the General Counsel certifies in writing, in advance, that the public interest would be served by such action or appearance.

SEC. 57. *Partner of employee.* A partner of an employee of the Association may not act as agent or attorney for anyone other than the Association, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the Association is a party or has a direct and substantial interest and in which such employee of the Association participates personally and substantially as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(a), 15, AND 17(a)

I. (a) The following are exempted from the prohibitions of sections 13(a), 15, and 17(a), because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his official capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in the transportation industry.

(2) Ownership of shares of stock and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation is less than $10,000 and is less than one percent of the outstanding stock of the organization concerned, and if the employee, his spouse, or minor children are not active in the management of the organization and have no other connection with or interest in it.

(3) Continued participation in a bona fide pension, retirement, deferred compensation, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him. To the extent the welfare or benefit plan is a profit sharing or stock bonus plan, this exemption does not apply.

(b) Notwithstanding paragraph 1(a)(2), the interest of an employee, whose position is listed in section II of this appendix, shall not be exempt from the prohibitions of sections 13(a), 15, and 17(a), with respect to any stock or other security holding in an organization to which he is assigned, or for which he has specific responsibility as a part of his regular duties, for conducting inspections or issuing certificates, waivers, exemptions, or approvals.

II. The following is a list of positions to which the exemption in paragraph 1(a)(2) of this appendix does not apply. This list may be amended at any time by the Association.

[To be supplied]

APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST UNDER SECTION 31 [RESERVED]

[39 FR 3825, Jan. 30, 1974]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Material Approved for Incorporation by Reference

(Revised as of October 1, 1990)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

49 CFR SUBTITLE A (PARTS 0–99)
OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION

	49 CFR
American National Standards Institute New York, NY Available from: Office of Environment and Safety, DOT, 400 7th St., SW, Washington, DC 20590.	
ANSI A117.1–61 (R 71), American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.	27.5; 27.67
Interagency Land Acquisition Conference Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402	
Uniform Appraisal Standards for Federal land Acquisition (1972 Edition), Stock No. 5259–0002..	25.260

Table of CFR Titles and Chapters

(Revised as of September 14, 1990)

Title 1—General Provisions

I	Administrative Committee of the Federal Register (Parts 1—49)
II	Office of the Federal Register (Parts 50—299)
III	Administrative Conference of the United States (Parts 300—399)
IV	Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	General Accounting Office (Parts 1—99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)
III	General Accounting Office (CASB) (Parts 300—499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
IV	Advisory Committee on Federal Pay (Parts 1400—1499)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII	Office of Special Council (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)

Title 6—[Reserved]

Title 7—Agriculture

	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600—699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800—2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)

Title 7—Agriculture—Continued

Chap.	
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400—2499)
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500—2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX	Office of Finance and Management, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400—3499)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XXXIX	Economic Analysis Staff, Department of Agriculture (Parts 3900—3999)
XL	Economics Management Staff, Department of Agriculture (Parts 4000—4099)
XLI	National Agricultural Library, Department of Agriculture (Part 4100)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200—299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Title 10—Energy

Chap.	
I	Nuclear Regulatory Commission (Parts 0—199)
II	Department of Energy (Parts 200—699)
III	Department of Energy (Parts 700—999)
X	Department of Energy (General Provisions) (Parts 1000—1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II	Federal Reserve System (Parts 200—299)
III	Federal Deposit Insurance Corporation (Parts 300—399)
IV	Export-Import Bank of the United States (Parts 400—499)
V	Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI	Farm Credit Administration (Parts 600—699)
VII	National Credit Union Administration (Parts 700—799)
VIII	Federal Financing Bank (Parts 800—899)
IX	Federal Housing Finance Board (Parts 900—999)
XI	Federal Financial Institutions Examination Council (Parts 1100—1199)
XIII	Farm Credit System Assistance Board (Parts 1300—1399)
XIV	Farm Credit System Insurance Corporation
XV	Oversight Board (Parts 1500—1599)
XVI	Resolution Trust Corporation (Parts 1600—1699)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1—199)
III	Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1—199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III	Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)
V	National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

Chap.	
	SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30—199)
II	National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)
IV	Foreign-Trade Zones Board (Parts 400—499)
VII	Bureau of Export Administration, Department of Commerce (Parts 700—799)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI	Technology Administration, Department of Commerce (Parts 1100—1199)
XII	United States Travel Service, Department of Commerce (Parts 1200—1299)
XIII	East-West Foreign Trade Board (Parts 1300—1399)
XIV	Minority Business Development Agency (Parts 1400—1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000—2099)
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0—999)
II	Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1—199)
II	Securities and Exchange Commission (Parts 200—399)
IV	Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III	Delaware River Basin Commission (Parts 400—499)
VI	Water Resources Council (Parts 700—799)
VIII	Susquehanna River Basin Commission (Parts 800—899)

Title 18—Conservation of Power and Water Resources—Continued

Chap.	
XIII	Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1—199)
II	United States International Trade Commission (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
II	Railroad Retirement Board (Parts 200—399)
III	Social Security Administration, Department of Health and Human Services (Parts 400—499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V	Employment and Training Administration, Department of Labor (Parts 600—699)
VI	Employment Standards Administration, Department of Labor (Parts 700—799)
VII	Benefits Review Board, Department of Labor (Parts 800—899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX	Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

Title 22—Foreign Relations

I	Department of State (Parts 1—199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200—299)
III	Peace Corps (Parts 300—399)
IV	International Joint Commission, United States and Canada (Parts 400—499)
V	United States Information Agency (Parts 500—599)
VI	United States Arms Control and Disarmament Agency (Parts 600—699)
VII	Overseas Private Investment Corporation, International Devel opment Cooperation Agency (Parts 700—799)
IX	Foreign Service Grievance Board Regulations (Parts 900—999
X	Inter-American Foundation (Parts 1000—1099)

Title 22—Foreign Relations—Continued

Chap.	
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII	United States International Development Cooperation Agency (Parts 1200—1299)
XIII	Board for International Broadcasting (Parts 1300—1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV	African Development Foundation (Parts 1500—1599)
XVI	Japan-United States Friendship Commission (Parts 1600—1699)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1—999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
III	National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

	SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)
	SUBTITLE B—Regulations Relating to Housing and Urban Development
I	Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
II	Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
III	Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
V	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
VI	Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699)
VII	Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)
VIII	Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)
IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

Title 24—Housing and Urban Development—Continued

Chap.	
X	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)
XI	Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800—1899)
XII	Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
XV	Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700—2799)
XX	Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)
XXV	Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I	Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II	Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
IV	Navajo and Hopi Indian Relocation Commission (Parts 700—799)

Title 26—Internal Revenue

I	Internal Revenue Service, Department of the Treasury (Parts 1—699)

Title 27—Alcohol, Tobacco Products and Firearms

I	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I	Department of Justice (Parts 0—199)
III	Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V	Bureau of Prisons, Department of Justice (Parts 500—599)
VI	Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII	Office of Independent Counsel (Parts 700—799)

Title 29—Labor

	SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)
	SUBTITLE B—Regulations Relating to Labor
I	National Labor Relations Board (Parts 100—199)

Title 29—Labor—Continued

Chap.	
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200—299)
III	National Railroad Adjustment Board (Parts 300—399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V	Wage and Hour Division, Department of Labor (Parts 500—899)
IX	Construction Industry Collective Bargaining Commission (Parts 900—999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX	Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV	Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600—2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700—2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II	Minerals Management Service, Department of the Interior (Parts 200—299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV	Geological Survey, Department of the Interior (Parts 400—499)
VI	Bureau of Mines, Department of the Interior (Parts 600—699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)
	SUBTITLE B—Regulations Relating to Money and Finance
I	Monetary Offices, Department of the Treasury (Parts 51—199)
II	Fiscal Service, Department of the Treasury (Parts 200—399)
IV	Secret Service, Department of the Treasury (Parts 400—499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 32—National Defense

Chap.	
	Subtitle A—Department of Defense
I	Office of the Secretary of Defense (Parts 1—399)
V	Department of the Army (Parts 400—699)
VI	Department of the Navy (Parts 700—799)
VII	Department of the Air Force (Parts 800—1099)
	Subtitle B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900—1999)
XX	Information Security Oversight Office (Parts 2000—2099)
XXI	National Security Council (Parts 2100—2199)
XXIV	Office of Science and Technology Policy (Parts 2400—2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII	Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1—199)
II	Corps of Engineers, Department of the Army (Parts 200—399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

	Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)
	Subtitle B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100—199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI	Office of Postsecondary Education, Department of Education (Parts 600—699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

Chap.

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VII Library of Congress (Parts 700—799)

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)

II Copyright Office, Library of Congress (Parts 200—299)

III Copyright Royalty Tribunal (Parts 300—399)

IV Assistant Secretary for Productivity, Technology and Innovation, Department of Commerce (Parts 400-499)

V Under Secretary for Economic Affairs, Department of Commerce (500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)

51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

Title 41—Public Contracts and Property Management—Continued

Chap.	
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61	Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management (Reserved)
	SUBTITLE E—Federal Information Resources Management Regulations System
201	Federal Information Resources Management Regulation (Parts 201-1—201-99)
	SUBTITLE F—Federal Travel Regulation System
301	Travel Allowances (Parts 301-1—301-14)
302	Relocation Allowances (Parts 302-1—302-12)
303	Payment of Expenses Connected with the Death of Certain Employees (Parts 302-1—302-2)
304	Reductions in Meeting and Training Allowance Payments (Parts 304-1—304-2)

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1—199)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)
V	Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200—499)
II	Bureau of Land Management, Department of the Interior (Parts 1000—9999)

Title 44—Emergency Management and Assistance

Chap.	
I	Federal Emergency Management Agency (Parts 0—399)
IV	Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (Parts 300—399)
IV	Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI	National Science Foundation (Parts 600—699)
VII	Commission on Civil Rights (Parts 700—799)
VIII	Office of Personnel Management (Parts 800—899)
X	Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1000—1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII	ACTION (Parts 1200—1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI	Legal Services Corporation (Parts 1600—1699)
XVII	National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XX	Commission on the Bicentennial of the United States Constitution (Parts 2000—2099)
XXI	Commission on Fine Arts (Parts 2100—2199)
XXII	Christopher Columbus Quincentenary Jubilee Commission (2200—2299)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1—199)
II	Maritime Administration, Department of Transportation (Parts 200—399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

Chap.	
I	Federal Communications Commission (Parts 0—199)
II	Office of Science and Technology Policy and National Security Council (Parts 200—299)
III	National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Department of Defense (Parts 200—299)
3	Department of Health and Human Services (Parts 300—399)
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
6	Department of State (Parts 600—699)
7	Agency for International Development (Parts 700—799)
8	Department of Veterans Affairs (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)
15	Environmental Protection Agency (Parts 1500—1599)
16	Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17	Office of Personnel Management (Parts 1700—1799)
18	National Aeronautics and Space Administration (Parts 1800—1899)
19	United States Information Agency (Parts 1900—1999)
22	Small Business Administration (Parts 2200—2299)
24	Department of Housing and Urban Development (Parts 2400—2499)
25	National Science Foundation (Parts 2500—2599)
28	Department of Justice (Parts 2800—2899)
29	Department of Labor (Parts 2900—2999)
34	Department of Education Acquisition Regulation (Parts 3400—3499)
35	Panama Canal Commission (Parts 3500—3599)
44	Federal Emergency Management Agency (Parts 4400—4499)
51	Department of the Army Acquisition Regulations (Parts 5100—5199)
52	Department of the Navy Acquisition Regulations (Parts 5200—5299)
53	Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
57	African Development Foundation (Parts 5700—5799)
61	General Services Administration Board of Contract Appeals (Parts 6100—6199)

Title 48—Federal Acquisition Regulations System—Continued

Chap.	
63	Department of Transportation Board of Contract Appeals (Parts 6300-6399)

Title 49—Transportation

	SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)
	SUBTITLE B—Other Regulations Relating to Transportation
I	Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II	Federal Railroad Administration, Department of Transportation (Parts 200—299)
III	Federal Highway Administration, Department of Transportation (Parts 300—399)
IV	Coast Guard, Department of Transportation (Parts 400—499)
V	National Highway Traffic Safety Administration, Department of Transportation (Parts 500--599)
VI	Urban Mass Transportation Administration, Department of Transportation (Parts 600—699)
VII	National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII	National Transportation Safety Board (Parts 800—899)
X	Interstate Commerce Commission (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I	United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
II	National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)
III	International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)
IV	Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)
V	Marine Mammal Commission (Parts 500—599)
VI	Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(Revised as of September 14, 1990)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV; 48, 57
Agency for International Development	22, II; 48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Finance and Management, Office of	7, XXX
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
International Cooperation and Development Office	7, XXII
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Operations Office	7, XXVIII
Packers and Stockyards Administration	9, II
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Transportation, Office of	7, XXXIII
World Agriculture Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53

Agency	CFR Title, Subtitle or Chapter
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Benefits Review Board	20, VII
Bicentennial of the United States Constitution, Commission on the	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from the Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II

Agency	CFR Title, Subtitle or Chapter
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farm Credit System Assistance Board	12, XIII
Farm Credit System Insurance Corporation	12, XIV
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I

Agency	CFR Title, Subtitle or Chapter
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Finance Board	12, IX
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Department of Agriculture	7, XXX
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Reduction in Meeting and Training Allowance Payments	41, 304
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI

Agency	CFR Title, Subtitle or Chapter
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle B, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII

Agency	CFR Title, Subtitle or Chapter
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I

Agency	CFR Title, Subtitle or Chapter
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Institute of Standards and Technology	15, II
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Operations Office, Department of Agriculture	7, XXVIII
Overseas Private Investment Corporation	22, VII
Oversight Board	12, XV
Packers and Stockyards Administration	9, II
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II

Agency	CFR Title, Subtitle or Chapter
Reclamation Bureau	43, I
Reduction in Meeting and Training Allowance Payments	41, 304
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Resolution Trust Corporation	12, XVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Tennessee Valley Authority	18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Allowance	41, 301
Travel Service, United States	15, XII
Treasury Department	17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision Office	12, V
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII

Agency	CFR Title, Subtitle or Chapter
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

1973

49 CFR

38 FR Page

Subtitle A
1.24 (f) revised.......... 29881
1.27 (b) through (g) revised.......... 14109
1.41 Revised.......... 29881
1.45 (a)(7) and (8) added.......... 15510
(a)(5) removed; (a)(6) redesignated as (a)(5); new (a)(6) and (9) added.......... 21930
1.46 Introductory text of (o) revised; (o)(5) added.......... 20449
(o)(5) correctly designated.......... 24902
(p) and (q) revised.......... 24902
1.47 (c) removed.......... 2693
1.48 (c) removed.......... 2693
(b)(1) revised.......... 26805
(b), (c), and (n) revised.......... 31497
1.49 (e) removed.......... 2693
1.50 (f) and (g) added.......... 31498
1.51 (b) revised; (g) added.......... 31498
1.52 (b)(8) redesignated as (b)(9); new (b)(8) added.......... 21930
1.53 (l) added.......... 9082
1.54 (d) revised.......... 21413
1.59 (l) added.......... 9082
(m) added.......... 14109
(n) added.......... 29881
1.60 (k) added.......... 10273
(c)(5) and (6) added.......... 15510
(c) revised.......... 21413
1.61 (j) revised; (k) added.......... 21930
7.85 (g)(2) revised.......... 32580
7 Appendix A amended.......... 18659
Appendix B amended.......... 10092
Appendix H amended.......... 34112

49 CFR—Continued

Subtitle A—Continued
21.5 (b)(1)(v) and (vi) amended, (b)(1)(vii) and (7) added.......... 17997
21.9 (b) amended.......... 17997
21.11 (b) amended.......... 17997
21 Appendix C amended.......... 5875
71.5 (a) revised.......... 9229
(g) removed.......... 13725
71.7 (f) removed.......... 13725
71.9 (c) removed.......... 13725
73 Added.......... 34877
85 Added.......... 6998
Appendix—Part 85-1 added.......... 16873
Appendix—Part 85-2 added.......... 22388
99.735-15 (a) amended.......... 14677
99 Appendix C amended.......... 19378, 33975

1974

49 CFR

39 FR Page

Subtitle A
Subtitle A Appendix added.......... 3825
1 Appendix A amended.......... 39043
1.4 (g) revised.......... 39723
1.27 Revised.......... 43404
1.44 (f) revised.......... 30353
(a)(2) revised; (a)(7) removed.......... 35232
1.45 (a)(4) removed.......... 30353
(a)(4) added.......... 35232
1.46 (l) and (m) revised.......... 4083
(o)(6) and (r) added.......... 10585
(o)(7) added.......... 17847
(p) revised.......... 39441
1.47 (g)(1) revised.......... 35232
(h) removed.......... 35233

49 CFR—Continued

Subtitle A—Continued

	39 FR Page
(c) CFR correction	35366
1.48 (b)(33) and (c)(1) amended	3680
(c)(15) added	5767
(p) added	7791
(q) added	10585
(b)(1) revised	13781
(b)(2[illegible]) revised	35233
1.49 (p) added	7791
(q) added	8919
(r) added	10585
1.50 (g) amended	3680
(f)(2) revised	13781
(h) added	35666
1.50a Revised	10585
1.53 (m) added	7425
(k) removed	39724
1.56 Removed	39724
1.57 (j) added	7791
(i) revised	39724
1.58 Heading revised; (g) added	10585
(d)(1) revised	11423
Introductory sentence revised; (d)(3) added	38103
(h) added	39724
1.59 (o) added	7425
1.60 (l) added	3919
(b)(1), and (c)(2) and (4) revised; (b)(8) added	39724
1.61 Revised	39724
1.64 Removed	39725
85 Appendix amended	4085
Appendix corrected	5190

1975

49 CFR

Subtitle A

	40 FR Page
1 Revised	43901
1.3 (b) and (c) revised	30821
1.4 (i) revised	30821
1.23 (f) revised	30821
1.24 (e) revised	30821
1.44 (o) added	20088
(a)(5) removed; (a)(6) redesignated as (a)(5)	30821
1.46 (s) added	3597
(t) added	20089
(b) and (t) revised; (n) removed; (u) and (v) added	30821
1.47 (a) revised; (k), (l), and (m) added	30821
1.48 (b)(14) revised; (r) and (s) added	6659

49 CFR—Continued

Subtitle A—Continued

	40 FR Page
(b)(25)—(30) redesignated as (b)(25)—(31); new (b)(25) added	14764
(b)(32)—(37) redesignated as (b)(35)—(40); new (b)(32) and (33) added	14764
(c)(1) and (15), and (n) revised; (t) added	14764
(b)(25) and (32) revised	17992
(d) revised; (u) and (v) added	30822
1.49 (b) and (l) revised; (r) added	3412
(f) revised; (t) and (u) added	30822
1.50 (a), (f)(2) and (3) revised; (i) and (j) added	6659
(g) revised	14765
1.51 (f) revised; (h) added	3412
(b) revised	14765
(i) added	17992
1.52 (b)(3) revised	30822
1.58 (d)(4) added	20089
(d), (e) and (g) removed	30822
(f) and (h) redesignated as (d) and (e); new (f) added	33976
1.60 (l) revised	3412
1.64 Added	30822
1 Appendix A amended	30822, 31605
7 Revised	7915
7.5 (f) added	13307
7.63 (b) and (c) corrected	10471
7.81 (a) corrected	10471
7 Appendices A-E revised; F amended	20276
10 Added	45729
10.61 (a) revised	57362
10 Appendix I heading added	54001
Appendix I amended	57362
21 Appendix C amended	14318
25 Revised	41040
25.153 Revised	58456
73 Removed	40110

1976

49 CFR

Subtitle A

	41 FR Page
1.4 (f)(4) added	42956
(f)(5) added	53798
1.22 (a) and (b) amended; (c) removed; (d) through (j) redesignated as (c) through (i)	44042
1.23 (a) amended	44042
1.42 Revised	1288
1.43 (b) revised	1288

49 CFR—Continued

41 FR Page

Subtitle A—Continued
1.45 (a)(10) added....45011
1.46 (n)(8) and (9) added....14519
1.47 (k) corrected....20172
(j) corrected (erroneously designated as (k))....29696
(l) added....31535
(f) revised....48122
1.48 (b)(29) and (33) amended....41703
(c)(16) added....41703
1.49 (q) amended; (u) added....20680
(q), (r), and (u) revised....56327
1.50 (f) revised....25015
(j) added....35849
1.51 (k) added....20680
(l) added....41703
1.54 (a) revised....1288
1.55 (i) added....1288
(h) amended....20680, 56327
1.56 (n) amended....20680
(n) removed....56327
1.57 (d) added....35849
1.59 (c)(1) revised....1288
(l)(3) added....20680
(a)(3) and (m) added....35849
(c)(8) amended; (c)(10) added....45011
(a)(4) added....49487
(l) removed; (m) redesignated as (n); new (l) and (m) added....56327
1.62 (h) amended....31535
1.63 (c) added....35849
1.64 Added....1288
Revised....44042
1.65 Added....1288
Removed....44710
1 Appendix A amended....44043
10 I. General exemptions redesignated as Appendix A and amended....24822
10.1 (b) and (d) amended....24822
10.12 Added....24822
10.31 (b) amended....24822
10.32 Added....24822
10.41 Amended....24822
10.43 Amended....24822
10.51 (c) amended....24822
10.61 (b) amended....24822
10.63 (b) amended....24822
10.81 Amended....24822
10.83 Amended....24822
10.85 Amended....24822
10 Appendix I amended....22564
Appendix A redesignated from Appendix I....24822
Appendix B added....24822
Appendix C added....24823

49 CFR—Continued

41 FR Page

Subtitle A—Continued
Appendix D added....24825
Appendix E added....24826
Appendix F added....24827
Appendix G added....24828
Appendix H added....24829
Appendix J added....24830
25 Appendix A revised....3300
Appendix A tables revised....24589
81 Added....32594
91 Added....54770
99 Appendix A amended....17911

1977

49 CFR

42 FR Page

Subtitle A
1.44 (e)(8) added....22366
1.46 (v) added....12176
(w) added....22366
(v) corrected as (w)....46306
(n)(10) and (x) added....61865
1.53 Revised....37210
1.59 (b)(9) added....22366
1.64 Revised....58754
1 Appendix A amended....58754
25 Appendix A tables revised...13, 35961
71.5 (b) revised....56610
85 Appendix amended....45800
99 Revised....3119
99.735-11 (a)(2) corrected....5359
99.735-15 (a) and (c)(2) corrected....5359
99.735-35 (b) corrected....5359
99.735-37 Corrected....5359
99 Appendixes B and C corrected....5359
Appendix C amended....8144, 24280, 39220

1978

49 CFR

43 FR Page

Subtitle A
1.46 (n)(11) added....5515
(n)(12) added....17360
1.49 (m) revised....14021
1.53 Revised; eff. 9-23-77....5516
(d) added....17360
7 Appendix B amended....48646
1 Appendix A amended....5834
25 Appendix A tables revised...10914, 33726
71.7 (b) amended....42763

best copy available

pages tightly bound

49 CFR—Continued

43 FR Page

Subtitle A—Continued

85 Appendix amended....24693
Redesignated as Part 101....43305
99.735-3 Amended....54251
99.735-13 (a) CFR correction....26311
99.735-35 (a) CFR correction....26311
99 Appendix C amended....54251

1979

49 CFR

44 FR Page

Subtitle A

1.22 (a) amended....43729
1.23 (e) amended; (n) added....43729
1.44 (p) added....2395
1.45 (a)(8) revised....40641
1.46 (z) added....2395
(y) added....5437
(n)(4) revised....10063
(z) revised....43730
1.52 (a) revised....10064
1.53 Heading and introductory text revised; (a)(6) added....2395
1.56 (n) added....47937
1.59 (c)(6) revised....40641
(c)(5) removed....47937
(m) revised....70164
1.65 Added....43729
5.41—5.59 (Subpart D) Added....4677
7 Appendix G revised....65765
25 Appendix A tables revised....7702, 40643
27 Added....31468
71.11 Heading revised; undesignated text designated as (a) and (b) added....55576
99 Appendix C amended....9755

1980

49 CFR

45 FR Page

Subtitle A

1.2 (a) revised; (h) added....83403
1.3 (c) removed; (b) introductory text and (8) revised....83403
1.4 (i) revised....83403
1.22 Revised....83403
1.23 Revised....83403
1.24 (b) through (d) revised....83404
1.25 (b) revised....83405
1.26 Revised....83405
1.42 Amended....83405
1.43 (b) revised....83405

49 CFR—Continued

45 FR Page

Subtitle A—Continued

1.45 (a)(5) amended; (a)(10) redesignated as (a)(11) and republished; new (a)(10) and (12) added....83405
1.46 (t) revised....2655
(n)(13) added....8993
(n)(4) revised....48630
(aa) through (cc) added....83405
1.47 (d) amended....783
(m) added....54055
(a), (b), and (f)(2) amended; (m) revised....83405
1.48 (d) removed....14576
(w) added....57674
Revised....83405
1.49 (f) removed....14576
(f) removed; (g) through (u) redesignated as (f) through (t); new (o) and (t) revised; new (u) and (v) added; new (i), (l), (o), and (t) amended....83407
1.50 Revised....83407
1.51 Revised....83408
1.52 (a) revised....48630
1.53 Introductory text amended; (a)(5) and (b)(3) revised....14576
Technical correction....16194
1.54 (a) and (b)(7) amended....83408
1.55 (f) revised....83408
1.56 Redesignated as 1.57; new 1.56 added....83408
1.57 Removed; new 1.57 redesignated from 1.56; new (b), (e), and (j) amended....83408
1.58 Removed; new 1.58 redesignated from 1.64....83409
1.59 (b)(8) revised....26068
(a)(1) and (c) (1) and (3)(i) amended; (a)(4) and (n) removed; (c) (6) through (10) redesignated as (c) (5) through (9); (b)(8), (e), and (k) through (m) revised....83409
1.60 Removed....83409
1.61 Revised....83409
1.62 Removed; new 1.62 redesignated from 1.65 and revised....83409
1.63 (d) added....83409
1.64 Redesignated as 1.58; new 1.64 added....83409
1.65 Redesignated as 1.62 and revised; new 1.65 added....83409
1 Appendix A amended....14577
3 Revised....75666
10 Revised....8993

49 CFR—Continued

45 FR Page

Subtitle A—Continued

23 Added....21184
  Effective date corrected....23441
  Policy statement....45281
23.51 Effective date confirmed....67667
25 Appendix A tables revised....59154
  Incorporation by reference approval....64832
27 Incorporation by reference approval....64832
27.81—27.107 (Subpart E) Intent to prepare EIS....11495
71.10 Revised....25065
  Revised; eff. 10-26-80....63494
71.10a Added; regulations transferred from 71.11(b)....25065
  Removed; eff. 10-26-80....63494
71.11 Heading and text revised....25065
  Revised; eff. 10-26-80....63494

1981

49 CFR

46 FR Page

Subtitle A

Subtitle A Cross reference to 44 CFR Part 332....2352
1.2 (i) added....47458
1.3 (b)(9) added....47458
1.4 (j) and (k) added....47458
1.26 (a)(7) added....6012
1.44 Introductory text amended; (q) added....47459
1.45 (a)(13) added....22593
  (a) introductory text and (12) revised....55265
1.46 (dd) added....23057
  (ee) added....26651
  (c) (2), (3), and (4) removed; (c) (5) through (10) redesignated as (c) (2) through (7); (n)(14) added....29269
  (ff) and (gg) added....63294
1.47 (g) revised....9603
  (m) revised....63294
1.48 (w) revised....63294
1.49 (w) added....42462
  (w) republished....42678
  (x) added....63294
1.53 (f) added....10919
  Introductory text revised; (a)(7) added....63294
1.54 (b)(10) added....22593
1.55 Introductory text and (f) revised....55266
1.66 Added....47459
1.67 Added....47460

49 CFR—Continued

46 FR Page

Subtitle A—Continued

1 Appendix A amended....37902
3.3 (a) amended....42272
6 Added; interim....49879
23.5 (b) revised; (c) through (e) redesignated as (d) through (f); new (c) added....60459
23.45 (h) revised; (i) removed; Appendix A added....23461
25 Appendix A tables revised....9604, 36857
  Incorporation by reference approvals....47938
27 Incorporation by reference approvals....47938
27.5 Amended; interim....37492
27.61 Amended; interim....37492
27.65 (c) amended; interim....37492
27.67 Heading revised; (a) amended; interim....37492
27.71—27.77 (Subpart D) Heading revised; Appendixes A and B added; interim....37492
27.77 Added; interim....37492
27.81—27.107 (Subpart E) Removed; interim....37492

1982

49 CFR

47 FR Page

Subtitle A

1.44 Introductory text and (m) introductory text revised; (m) (13) added....11676
  Introductory text and (m) introductory text revised; (m) (10) revised and (m)(11) removed....18903
1.46 (d) revised....1122
  Introductory text revised; (hh) correctly added....11676, 31281
  Introductory text revised; (ii) correctly added....24581, 31281
  (ee) amended....39687
1.47 (n) added....11677
1.48 (w) revised....33965
1.49 (k) amended....16632
  (k) revised....33965
  (y) added....51400
1.51 Introductory text revised; (m) added....16632
1.52 Introductory text revised; (c) added....11677
1.57 (e) revised....18903

49 CFR—Continued

47 FR Page

Subtitle A—Continued

Introductory text and (n) revised 24581
Introductory text and (p) added 30782
(q) added 43699
1.59 Introductory text revised; (a)(4) added 57287
1.66 Introductory text revised; (u) added 11677
5.41—5.59 (Subpart D) Removed 29678
7 Appendix G amended 55684
25 Appendix A revised 6278, 33270

1983

49 CFR

48 FR Page

Subtitle A

1.22 Introductory text and (a) revised; (g) and (h) redesignated as (h) and (i) and revised; new (g) added 44078
1.23 (a) revised; (k) removed; (g) through (j) redesignated as (h) through (k) and revised; new (g) added 44078
1.26 (a) introductory text revised; (a)(6) and (7) redesignated as (a)(7) and (8) and revised; new (a)(6) added 44079
1.44 Introductory text revised; (b)(3) added 27547
1.46 (jj) added 37998
Introductory text, (c) introductory text and (5), (d), (m), (v), (z), and (ff) revised; (kk) and (ll) added 44080
1.47 (g) corrected 44814
1.48 (w) revised; (x) and (y) added 40520
(c)(1) amended; (c)(18) and (z) added 52678
1.51 Introductory text and (d) revised 15476
(l) amended 52678
1.57 (e) revised 2525
Introductory text, (n), and (o) revised 15127
1.63 Heading and introductory text revised 44079
6 Revised 1070
7 Appendix H corrected 44814
17 Added 29272
23 Policy statement 15476

49 CFR—Continued

48 FR Page

Subtitle A—Continued

23.41 (a)(2)(i) and (ii) and (3)(ii) and (iii) revised 33444
23.61—23.69 (Subpart D) Added 33442
23.68 (e)(1) correctly designated 41163
25.29 (b) removed 29274
25.199 (b) corrected 44814
25 Appendix A revised 3760
Appendix A corrected 8280, 20714
Appendix A revised 32172, 57292
71 Authority citation 55289
71.10—71.13 Revised; eff. 10-30-83 43281
Clarification 53709
71.11 Nomenclature change 55289
71.12 Nomenclature change 55289
71.13 Nomenclature change 55289
98 Added 12383

1984

49 CFR

49 FR Page

Subtitle A

1.43 (a) revised; (c) added 50996
1.46 (c)(6) revised 1521
1.47 (c) revised 4077
(g) revised 14955
(p) added 44102
1.48 (r)(3) revised 6908
(c)(1) revised 38610
1.49 (z) added 1521
(y) revised 1729
(aa) added 31290
1.51 (a) revised 6908
1.53 (a)(5) amended 31290
(g) added 50996
1.56 (i) added 50996
1.56a Added 50996
1.57a Added 50996
1.59 (n) added 50997
1.60 Added 50997
1.61 (d) added 50997
1.65 Revised 26594
1.66 (p) removed 12706
1.69 Added 50997
1 Appendix A amended 14510, 46145
29 Added 15200
71.11 Technical correction 887
71.12 Technical correction 887
71.13 Technical correction 887

1985

49 CFR

50 FR Page

Subtitle A

1.22 (a) revised....7782

1.23 (i) through (n) redesignated as (j) through (o); new (i) added; new (o) revised....7782

1.45 (b) revised....9036

1.48 (b)(23) and (27), (c)(2) and (19) and (r)(3) revised; (b)(28)—(34) redesignated as (b)(29)—(35), and new (b)(28) added....43165

Technical correction....45614

(aa) added....278

(bb) added....30275

1.51 (n) added....30275

1.56 (j) added....52468

1.61 (d)(4) removed; (d)(5) revised....52468

1.64 Revised....7782

1.68 Added....7782

Revised....9036

1 Appendix A amended....45728

23.87 Revised....18494

25 Revised....8970

25.2 (n) corrected....21852

25.304 (c)(2) corrected....21852

25 Appendix A amended....3526

Appendix B corrected....12805

27.77 Appendix A amended....13040

90 Added....33340

90 Authority citation revised....49931

90.1 Amended....49931

90.3 Amended....49931

1986

49 CFR

51 FR Page

Subtitle A

1 Authority citation revised....12618, 12619, 29471

1.4 (k) (3) and (5) removed; (k) (4), (6), and (7) redesignated as (k) (3) through (5); new (k)(5) amended....29471

1.22 (f) revised....29232

(a), (b), (e), and (f) revised; introductory text republished....34218

1.23 (f) revised....29232

(a) and (b) revised....34219

1.44 (m)(12) and (13) revised; (m)(14) through (19) added....12619

(r) added....29232

49 CFR—Continued

51 FR Page

Subtitle A—Continued

1.45 (a) introductory text, (9), and (12) revised; (c), (d), and (e) added....29233

1.46 (pp) added....12619

1.47 (e) and (p) revised....20831

1.48 (a), (e), (f), (g), (k), (p), (w), (x), and (z) revised; (d), (h), and (v) removed....12618

(cc), (dd), and (ee) added....29234

1.56 (j) introductory text and (1) revised....20831

(i)(1) revised....34219

1.57a Existing text designated as (a); (b) added....20831

Revised....32320

1.59 Introductory text, (a) heading, (b) (1) through (3) and (6), (c) (1) through (3) introductory text, (5) and (7) through (9), and (h) through (n) revised; (c) (10) through (13) and (o) added....29232

(p) added....29234

1.59a Added....29233

1.67 (a)(1) revised....29471

1.69 Removed....34219

1 Appendix A amended....29233

25 Revised....7022

27 Authority citation revised....19017

27.5 Amended....19017

27.67 (d) revised....19017

27.71 (a)(1) and (2) introductory text, (v), (ix), and (xii) amended....19017

27.73 (a)(1)(i) and (ii) introductory text and (L) amended....19017

27.75 (a)(1) amended....19017

27.71—27.76 (Subpart D) Heading amended....19017

27.77 Removed....19017

27.71—27.77 (Subpart D) Appendix B removed....19017

27.81—27.103 (Subpart E) Added....19018

71 Authority citation revised....41631

71.1 (c) revised....41631

71.2 (a) revised....41631

1987

49 CFR

52 FR Page

Subtitle A

1.44 (j) revised....3012

1.45 (a)(4) revised....46365

49 CFR—Continued

Subtitle A—Continued

	52 FR Page
1.46 (ff) and (gg) revised	47007
1.48 (gg) added	46365
(ff) added	46479
Technical correction	47097
1.49 Introductory text republished; (bb) added	24164
1.56 (k) added	30688
1.57 (r) added	18917
1.59 (q) added	9864
1 Appendix A amended	1916
23 Authority citation revised	39229
23.45 (e) amended; (f)(3) added; (g)(4) revised	39230
23.47 (e) revised; (f) added	39230
23.61—23.69 (Subpart D) Authority citation removed	39229
23.61 (a) and (b) amended	39230
23.62 Amended	39230
23.63 Revised	39231
23.61—23.69 (Subpart D) Appendix A amended	39231
24 Added; interim	47997
25 Authority citation revised	48027
Removed; eff. 4-2-89	48028
25.1 Heading revised; (a) and (b) redesignated as (a) (1) and (2); introductory text designated as new (a) introductory text; new (a) heading and (b) added	48027
29 Revised; interim	39057

1988

49 CFR

Subtitle A

	53 FR Page
1.45 (e)(2) revised	15845
1.47 (q) added	10251
1.48 (cc) revised; (dd) and (ee) removed	10251
Introductory text, (b) introductory text, and (c) introductory text republished; (b) (29) and (34), (c) (1) and (2), (q), (s), and (cc) revised; (c)(20) and (v) added; (i) removed	15845
1.50 Revised	23122
7 Revised	30268
18 Added	8086, 8087
18.10 (a)(3) added	8086
18.20 (d) added	8086
18.21 (j) and (k) added	8086
18.22 (c), (d), and (e) added	8086
18.24 (b) (8), (9), and (10) and (c)(3) added	8086

49 CFR—Continued

Subtitle A—Continued

	53 FR Page
18.25 (g) (4) through (7) added	8087
18.31 (d) added	8087
18.36 (j) through (t) added	8087
18.40 (c)(1) added	8087
18.41 (f) added	8087
23 Authority citation revised	18286
23.61 (a) and (b) amended	18286
23.62 Amended	18286
23.63 (d) added	18286
23.64 (b)(2), (c), and (e) introductory text and (2) amended	18286
23.65 Amended	18286
23.68 (e)(2) amended	18286
23.61—23.69 (Subpart D) Appendix A amended	18287
24 Technical correction	467
29 Revised; nomenclature change; eff. 10-1-88	19203, 19204
29.105 (g)(3), (t)(3), (w), and (x) added; eff. 10-1-88	19203
29.120 Added; eff. 10-1-88	19203
29.215 (a) added; eff. 10-1-88	19204
29.315 (a)(1) added; eff. 10-1-88	19204
29.510 (b)(1)(i) added; eff. 10-1-88	19204
30 Added	19916
31 Added	881
40 Added; interim	47004
89 Revised; eff. 1-23-89	51238
92 Added	4171
92.9 (a) revised	51279
99 Authority citation revised	16414
99 Appendix A amended	16414

1989

49 CFR

Subtitle A

	54 FR Page
1.46 (qq) added	26378
(rr) added	35191
1.49 Introductory text republished; (cc) added	8747
Introductory text republished; (dd) added	38233
1.57 (q) removed	38233
1.57b Added	10010
1.59a (c)(6) added	46616
1.63 (a) removed	10010
7.1 (d) amended	10010
7 Appendix A amended	10010
24 Revised	8928
24.1 (b) corrected	24712

49 CFR—Continued

54 FR Page

Subtitle A—Continued

24.2 (a)(1) and (g)(2)(i) corrected....24712
24.101 (a)(2) amended....24712
24.105 (c) and (d)(2) corrected....24712
24.601 Corrected....24712
24.603 (b) corrected....24712
24 Appendix A corrected....24712
Appendix B corrected....24712
25 Removal at 52 FR 48027 confirmed; see regulation codified at 49 CFR 24....8912
27.99 (b)(5) removed....31041
29 Heading and authority citation revised....4966
Technical correction....6363
29.305 (c) (3) and (4) amended; (c)(5) added; interim....4966
29.320 (a) revised; interim....4966
29.600—29.635 (Subpart F) Added; interim....4966
29 Appendix C added; interim....4966
40 Revised....49866

49 CFR—Continued

54 FR Page

Subtitle A—Continued

89 Authority citation revised....28680
89.33 Removed....28680
89.37—89.47 (Subpart C) Added....28681

1990

(Regulations published from January 1, 1990 through October 1, 1990)

49 CFR

55 FR Page

1.46 (ss) added....30235
20 Added; interim....6737, 6756
29.305 Regulation at 54 FR 4950, 4963 confirmed....21705
29.320 Regulation at 54 FR 4950, 4963 confirmed....21705
29.600—29.635 (Subpart F) Revised....21688, 21705
29 Appendix C revised....21690, 21705
71.7 (d) revised; eff. 10-28-90....30914